

## I. 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 cause. 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 disqualification or recusal.

- a. Carolyn Blanche Shipp, Employee
- b. David L. Walker, attorney of record for Employee Carolyn Blanche Shipp
- c. Thomas and Betts Corporation, Employer
- d. Gallagher Bassett Services, Inc., Third party administrator for workers' compensation insurance carrier for Employer
- e. M. LaUna Brubaker and Leitner, Williams, Dooley & Napolitan, PLLC, attorney(s) of record for Employer and Third Party Administrator

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

On or about September 6, 1989, Claimant/Employee, Ms. Shipp, began working with Thomas & Betts in Byhalia, Marshall County, Mississippi. Appellee's Record Excerpts (hereinafter "A.R.E.") at p. 83, lines 3-6.

Ms. Shipp was terminated from her employment with Thomas & Betts as of July 29, 2004, for "not maintaining my rate of production". A.R.E. at p. 98, lines 1-4.

On or about May 4, 2005, Ms. Shipp filed her Petition to Controvert with the Mississippi Workers' Compensation Commission alleging that she suffered a compensable injury while in the employ of Thomas & Betts on July 28, 2004. A.R.E. at p. 4. The alleged injury was to "both arms: whole body" as the result of "repetitive motion injury". Id.

On or about May 31, 2005, Employer, Thomas & Betts, filed its Answer to Petition to Controvert, and Addendum "A" to Answer to Petition to Controvert, with the Mississippi Workers' Compensation Commission. A.R.E. at p. 6-9. Number 13 in the Answer requested a list of affirmative defenses, to which Thomas & Betts responded "[P]lease see attached Addendum "A" to Answer." A.R.E. at p. 6. Number 9 in the Addendum asserted an affirmative defense that the claim was time barred by the applicable statute of limitations as promulgated by the Mississippi Workers' Compensation Laws. A.R.E. at p. 8.

Ms. Shipp was hired by Thomas & Betts effective September 6, 1989. A.R.E. at p. 83, lines 3-6. While employed with Thomas & Betts, Ms. Shipp performed various jobs, including Packer, Inventory Control, Receiving Dock, and Order Services. A.R.E. at p. 50, lines 17-19, 29; p. 51, lines 7, 21, 25; p. 52, line 1.

Ms. Shipp was terminated effective July 28, 2004. A.R.E. at p. 52, lines 14-18. Termination was the result of her "not keeping up with production and I had some, some tardies ... plus I was working with a group of people half my age." A.R.E. at p. 52, lines 19 - 27. Throughout her employment with Thomas & Betts, Ms. Shipp received numerous reprimands for insufficient production levels, the first being as early as 1998. A.R.E. at p. 65, lines 4-6; p.197-204.

A bi-furcated hearing on the merits, as to compensability only, transpired before Administrative Law Judge Virginia Mounger on Wednesday, October 4, 2006, in Hernando, DeSoto County, Mississippi. Evidence presented at the hearing consisted of the deposition transcript for testimony provided by Ms. Shipp on April 25, 2006; Deposition transcript for testimony provided by Dr. William Harold Knight, treating physician, on June 15, 2006; Personnel Records; and, Deposition transcript for testimony provided by Dr. Joseph C. Boals, III, Ms. Shipp's independent medical evaluator.

Following the hearing, an Order of Administrative Judge was entered with the Commission dated January 10, 2007, determining that this claim is non-compensable based upon both the running of the applicable statute of limitations, and the fact that Ms. Shipp did not prove by the necessary, requisite medical evidence the causation of her alleged injuries.

Appeal was taken to the Order of the Administrative Judge by Ms. Shipp. On June 12, 2007, the Full Commission Order was entered affirming the Order of Administrative Judge.

Appeal was taken to the Full Commission Order by Ms. Shipp. In response to same, the Circuit Court of Marshall County, Mississippi rendered its Opinion and Order on February 27, 2008, affirming the Mississippi Worker's Compensation Commission's decision in this matter.

From such Opinion and Order Ms. Shipp takes appeal.

#### **V. SUMMARY OF ARGUMENT OF THOMAS & BETTS**

The Order of Administrative Judge previously entered was affirmed by the Full Commission, and by the Circuit Court of Marshall County. These rulings should be affirmed by this Honorable Court as the findings are firmly and soundly based upon the Mississippi Workers' Compensation Laws, including Miss. Code. Ann § 71-3-35 (statute of limitations), and lack of requisite expert medical testimony as to causation of the alleged injury.

#### **VI. ARGUMENT**

##### **a. Statue of Limitations**

Mississippi Code Annotated § 71-3-35, reads in part that "[r]egardless of whether or not notice was received, if no payment of compensation (other than medical treatment or burial expense) is made and no application for benefits is filed with the commission two years from the date of the injury or death, the right to compensation therefore shall be barred."

The two-year statute of limitations is tolled until the injury becomes apparent. Struthers Wells-Gulfport, Inc. v. Bradford, 304 So.2d 645, 649 (Miss.1974). Carpal tunnel

syndrome is a gradual infirmity and is not immediately recognizable. Lucas v. Angelica Uniform Group, 733 So.2d 285, 288 (Miss.Ct.App.1998).

Where an employee knew or had reason to believe that she had sustained an injury, but there was nothing in the record to indicate that she, as a reasonable person, should have recognized the nature, seriousness, and probable compensable character of the injury, the statute of limitations did not begin to run until by reasonable care and diligence it was discoverable and apparent that a compensable injury had been sustained. Struthers Wells-Gulfport, Inc., v. Bradford, 304 So.2d 645 (Miss. 1974). Where latent injuries are involved, the time for filing a compensation claim under the two-year statute commences to run when it becomes reasonably discoverable that the claimant has sustained a compensable injury and disability, or, in other words, the claim period runs from the time a compensable injury becomes reasonably apparent. Tabor Motor Co. v. Garrard, 233 So.2d 811 (Miss. 1970). Ordinarily, this is an issue of fact to be determined. Id.

Where a worker does not lose any work as a result of an injury, does not receive either disability income benefits or nonburial death benefits, and does not file a claim for benefits within two years of the injury, such claim for workers' compensation benefits is barred by the two-year statute of limitations contained in Miss. Code Ann. § 71-3-35. Jordan v. Pace Head Start, 852 So.2d 28 (Miss. Ct. App. 2002).

Ms. Shipp argues that "[w]hen a claimant's condition gradually worsens during his or her term of employment with the employer and the claimant files a workers' compensation claim with the commission within two years of terminating his or her employment with the employer, the claim is not barred by the two year statute of limitations." Jenkins v.



Ogletree Farm Supply, 291 So.2d 560, 562 (Miss. 1974). Thomas & Betts would state that the facts of such case are not applicable to the case *sub judice*. In Jenkins, the Court opined that the accidental injury of the claimant "occurred at the time he quit his job, after being advised to do so by his doctors." Id. The record is void of any physician recommending that Ms. Shipp quit her job due to her alleged complaints of pain. Further, Ms. Shipp herself admits that she was terminated: she did not quit her job like Mr. Jenkins. Ms. Shipp herein did not have two years from the date of her termination from employment with Thomas & Betts to file a workers compensation action, but in fact had two years from the date the alleged injury became reasonably apparent, and/or was first diagnosed by a physician: March, 2003. Tabor v. Motor Co. v. Garrard, 233 So.2d 811 (Miss.1970).

During the hearing on compensability, Ms. Shipp testified that she began experiencing numbness and aching in her hands as early as 1999. A.R.E. at p. 53, lines 9 – 13. At the time she began experiencing these symptoms, she "began to wonder if my job had something to do with all the pain and problems that I was having." A.R.E. at p. 16, lines 1-6; p. 59, lines 19-27. Ms. Shipp sought medical treatment from Dr. Brame and Dr. Wright in Holly Springs, Mississippi, for these symptoms. A.R.E. at p. 89, lines 11 through p. 90, line 7. In 2000, Ms. Shipp testified that her left shoulder began hurting and she sought treatment from Dr. Brame and Dr. Wright. A.R.E. at p. 93, lines 9 through p. 94, lines 5. Ms. Shipp further testified that she had physical difficulties performing her job at Thomas & Betts because of "my shoulders, the arms and the hands ... around 2002". A.R.E. at p. 103, line 9 through p. 104, line 14.

Ms. Shipp first treated with Dr. Knight, an orthopedic surgeon, May 9, 2002, for pain in her right elbow. A.R.E. at p. 166, lines 7-12. Dr. Knight treated Ms. Shipp again on March 17, 2003, for complaints of bilateral hand pain and left shoulder pain. A.R.E. at p. 168, lines 2-6. At that time, Ms. Shipp was diagnosed with bilateral carpal tunnel. A.R.E. at p. 170, lines 12-13. She returned three days later, March 20, 2003, at which time Dr. Knight diagnosed Ms. Shipp with "severe carpal tunnel right and moderate carpal tunnel left." A.R.E. at p.172, lines 14-21. During that same appointment, Dr. Knight recommended surgical treatment for the bilateral carpal tunnel. A.R.E. at p. 176, lines 2-8.

In her deposition, Ms. Shipp testified that she began having difficulty performing her job duties on the receiving dock as early as 1999. A.R.E. at p. 89, line 11 through p. 90, line 5. She told her supervisor at that time, George Wright, of her pain. A.R.E. at p.91, lines 5 – 11. She continued to testify that she also told other employees of Thomas & Betts about the pain and discomfort she felt in both of her shoulders, elbows and wrists, one of which was her supervisor, Toby Ingram, "early on. I think it would have been in – I want to say early in 2003." A.R.E. at p. 111, line 18 through p. 112, line 21. Ms. Shipp also testified that she reported her pain and doctor visits to Barbara Wicks, the lead person in repair and warranty, who attempted to accommodate Ms. Shipp's verbal complaints of pain while performing job duties. A.R.E. at p. 137, lines 4 – 21. She continued to testify that Mr. Ingram "gave me the time off to go see the doctor. When I returned to work that Monday, I went in – he took me in to personnel and I talked with Barbara Knight." A.R.E. at p. 112, line 22 through p. 113, line 3. Despite her complaints performing work activities as early as 1999, and diagnosis of bilateral carpal tunnel syndrome in 2003, Ms. Shipp was

asked "other than leading up to or immediately after a doctor visit, did you have to take vacation days because of the pain?" She responded, "I don't think so." A.R.E. at p. 117, line 24 through p. 118, line 3. Ms. Shipp testified that she never made a claim for workers' compensation benefits while within her employ of Thomas & Betts, and that she did not ask Thomas & Betts to pay for any medical treatment for her bilateral carpal tunnel syndrome complaints. A.R.E. at p. 134, lines 16-24.

Ms. Shipp testified that in early 2003 she thought that the pain she was experiencing was related to her job function. She testified to this time period, despite her difficulty with job duties as early as 1999, and despite receiving medical treatment both in 1999, and again on May 9, 2002, while she continued to experience difficulty at work performing her job duties because of the pain. A.R.E. at p. 115, lines 7-12. Dr. Boals, Ms. Shipp's independent medical examiner, testified that Ms. Shipp reported to him that she "had developed symptoms of pain and numbness associated with her job which was repetitive. She reported this in the year 2003 and was seen by Dr. Knight." A.R.E. at p. 229, lines 10-14. When asked if he could determine the date of onset of the carpal tunnel syndrome, Dr. Boals testified "I can't ... she said it came on in 2003, in that year ... In 2003." A.R.E. at p.241, lines 9-24. This date information and testimony was based upon what Ms. Shipp had told Dr. Boals. A.R.E. at p. 242, lines 1-3.

Based upon the timing of her visits with, and treatment by, Dr. Knight, and the history she gave to Dr. Boals, "early 2003" would have been in March, as she received medical treatment on two occasions in March of 2003, and not again until September of that year. As carpal tunnel is a gradual infirmity that is not reasonably recognizable,

Claimant argues that the statute of limitations for bringing this claim should have been tolled until the injury became apparent. As a reasonable person, Claimant discovered her apparent injury and disability in March, 2003, as she testified to in her deposition, and as Dr. Boals testified she told him during her evaluation in November, 2005. The statute may have been tolled for some time period, but it commenced to run in "early 2003", more specifically March, 2003, when Ms. Shipp was diagnosed with bilateral carpal tunnel syndrome and when Ms. Shipp admittedly thought, discovered and/or recognized that her condition may have been work related. Proof of Ms. Shipp's recognition of the nature, seriousness, and probable compensable character of the injury is evidenced in the fact that she sought medical attention over a course of a few years until the point that surgery was recommended, and further evidenced in the fact that she reported her pain, difficulty with job tasks, and medical treatment with various supervisors and/or management members of Thomas & Betts, starting as early as 1999 and continuing through her termination, for unrelated reasons, in 2004. Struthers, 304 So.2d 645 (Miss. 1974).

It is clear, from the testimony of Ms. Shipp herself, that following diagnosis of bilateral carpal tunnel syndrome in March, 2003, there has been no payment of disability income benefits or nonburial death benefits to Ms. Shipp by Thomas & Betts. Therefore, the two year statute of limitations applies to this claim. Jordan at 28. The fact that Ms. Shipp did not process her claim, if she had one, does not suspend the running of the two-year statute of limitations. Taylor v. Crosby Forest Prods. Co., 198 So.2d 809 (Miss. 1967).

As the record in Taylor indicated, the docket herein reveals that Ms. Shipp filed no claim with the Commission, as required by statute, prior to the expiration of the two year statute

of limitations, a date sometime in early 2005, or more specifically a date in March, 2005. Ms. Shipp testified to a date of which she thought her condition was work related, if at all, that she notified Thomas & Betts of her condition, that no benefits were paid to her, and that no time off work was taken by her because of the injury. As such, and based upon case law and precedence in Mississippi, the statute of limitations for Ms. Shipp's claim for bilateral carpal tunnel syndrome should have commenced running on or before March, 2003, which bars her claim herein as it was not filed with the Commission until May 4, 2005, more than two years after Ms. Shipp was, or reasonably should have been, aware of her apparent condition. Tabor at 817. For these reasons, Thomas & Betts requests that this Honorable Court affirm the prior decisions of the Administrative Law judge, the Full Commission and the Circuit Court of Marshall County, all previously entered in this matter.

**b. Causation**

A fundamental concept of workers' compensation law is that the claimant has the burden of proving the causal connection between the claimant's employment and the resulting disabling condition. Hedge v. Leggett & Platt, Inc., 641 So.2d 9, 12-13 (Miss. 1994); Olen Burrage Trucking Co. v. Chandler, 475 So.2d 437, 439 (Miss. 1985). In so proving her cause, the claimant must meet such burden by a preponderance of the evidence. Texas Gas Transmission Corp. v. Dabney, 919 So.2d 1079 (Miss. 2005). "In all but the simple and routine cases ... it is necessary to establish medical causation by expert testimony." Cole v. Superior Coach Corp., 106 So.2d 71, 72 (Miss. 1958). A claim of disability must be supported by medical findings. Miss. Code Ann. § 71-3-3(i), and Howard Industries, Inc. v. Robinson, 846 So.2d 245, 252 (Miss. 2002). Medical evidence must

prove not only the existence of a disability but also its causal connection to employment.  
Id. at 259.

Treating physician Dr. Knight, an orthopedic surgeon who has practiced twenty-three years with Memphis Orthopedic Group, testified that he treated Ms. Shipp on March 17, 2003, when she complained of "bilateral hand pain, left shoulder pain." A.R.E. at p. 164, lines 12-24; p. 168, lines 2-6. The complaints had been present for "several months" and he had even injected the right elbow the spring before. A.R.E. at p. 168, lines 13-20. On March 17, 2003, Dr. Knight diagnosed Ms. Shipp with "mild bilateral carpal tunnel." A.R.E. at p. 170, lines 12-21. Three days later she returned to his office and he conducted NEUROMetrix tests which revealed "carpal tunnel severe on the right and moderate on the left" and he discussed the possibility of surgery for her carpal tunnel based upon the severity of the nerve test report on that date. A.R.E. at p. 172, lines 14-21; p. 176, lines 2-8. She did not return to him for further treatment until September 4, 2003, that fall, and nearly six months later. A.R.E. at p. 174, lines 17-19. The next, and last, treatment date of Ms. Shipp by Dr. Knight was February 19, 2004. A.R.E. at p. 175, lines 9-11.

When Dr. Knight was asked in his deposition regarding possible causes of carpal tunnel, he stated that

[c]arpal tunnel is caused by lots of different things, and it's not specifically consistent with anything, and it's consistent with everything...[i]t's not associated with repetitive activity ... and so the only thing you really can assign an etiology to carpal tunnel would be associated with a displaced fracture of the wrist ... That's really the only time that you can, with a clear conscience, say, that carpal tunnel is from the fracture.

A.R.E. at p. 177, line 22 through p.178, line 15. When specifically asked about whether or not he had an opinion as to what caused the bilateral carpal tunnel in Ms. Shipp initially, Dr. Knight testified "No." A.R.E. at p. 178, lines 16-19; and again at p. 179, lines 16-22.

On cross-examination, Ms. Shipp's counsel read the specific parts of Ms. Shipp's deposition which reflected Ms. Shipp's description of her various job responsibilities while employed with Thomas & Betts to Dr. Knight. Based upon those descriptions, Dr. Knight was asked if he had an opinion based upon a reasonable degree of medical certainty as to whether any of those job responsibilities/descriptions caused or aggravated her bilateral carpal tunnel syndrome and he responded, "I don't know that there is a way to prove it, and that her carpal tunnel is caused by any particular thing, job or otherwise, except in a situation of a fracture." A.R.E. at p.190, line 17 through p. 191, line 4. "There aren't any studies that demonstrate one way or another that carpal tunnel is caused by anything in particular except for fractures." A.R.E. at p. 192, lines 8-11. Dr. Knight continued to testify that carpal tunnel syndrome is "probably more related to a particular anatomy, the patient's individual anatomy than anything." A.R.E. at p. 193, line 24 through p. 194, line 3.

Dr. Knight had been asked by a potential employer of Ms. Shipp in 2005 to render an opinion regarding whether or not she could perform the tasks of a certain job based upon the fact that she was being treated for bilateral carpal tunnel syndrome. He stated that he was of the opinion she would not be able to perform the duties outlined, as they would probably aggravate her situation; however, he clarified for the record that this statement and recommendation did not go to causation of the injury. A.R.E. at p. 194, lines 9-24. Regarding causation, Dr. Knight continued to testify:

It's just that the causation issue is just all over the map, and there are some people who firmly believe that every repetitive activity is caused by it, and other people who think that it's absolutely not. I have at least one partner who has had surgery for it, and he doesn't do any repetitive work at all.

So causation, like I said, in the presence of a fracture, it is very easy to allocate causation there. In this situation, there are lots of people who do repetitive work that never get it, they don't all get carpal tunnel that do repetitive work, so it's – I think it's difficult to absolutely assign a causation in these situations where it's not clear cut.

A.R.E. at p. 199, lines 8-24.

On November 8, 2005, an independent medical examiner evaluated Ms. Shipp at the request of her counsel (A.R.E. at p. 229, lines 4 – 8) on one occasion, a date over two years after Claimant testified she was aware of her apparent condition), testified that he received a history of what he “thought was an over-time type of problem that developed due to the repetitive use of her arms. And she would have to be able to justify that, explain it, and make sense of it. If she is using air guns or drills or screwdrivers all day long or typing, or like a court reporter, certainly those kinds of activities have been associated with carpal tunnel syndrome.” A.R.E. at p. 235, lines 3 – 16. The record remains void of any proof of repetitive work of the nature and extent as that mentioned by Dr. Boals. The distinction between job descriptions, and their alleged extent of repetitive severity, is fatal to an apparent attempt by Ms. Shipp, and Dr. Boals, to link or establish causation. The descriptions of her various job titles, and duties, given in her deposition and during testimony at the bi-furcated hearing do not mention any tasks of a repetitive nature type similar to those given as examples by Dr. Boals. A.R.E. at p. 83, line 7 through p. 89, line 3.



When asked if he had an opinion, to a reasonable degree of medical certainty, what caused Ms. Shipp's carpal tunnel syndrome, Dr. Boals testified as follows:

It is hard for me to know. She said her job caused her to have the numbness. Now, causation many times is an issue that I don't decide. I can assign an impairment and suggest treatment or care based on assuming some facts, which I have done here.

I am assuming she is going to be able to document the work caused this. If she can, then what I said holds. If she can't, then, of course, this not work related.

A.R.E. at p. 242, lines 4-17. Dr. Boals' testimony and opinions are based upon the assumption that Ms. Shipp is "able to document the work caused this" injury. This assumption is not well founded, as the record remains void of any expert testimony that the injury of which Ms. Shipp complains is work related, or even that her work duties and/or required tasks were in fact repetitive in nature to the extent that Dr. Boals testified might cause carpal tunnel. Dr. Boals clearly testified "causation many times is an issue that I don't decide", this claim being one of those many times. Therefore, his testimony as to what may have caused Ms. Shipp's condition should not be considered by this Honorable Court as it was based upon evidence not currently in the record and not proven by medical testimony as required by Mississippi workers' compensation statutory and case law.

When asked if Dr. Boals, Ms. Shipp's independent medical examiner, would defer to Dr. Knight, the treating physician, regarding causation, Dr. Boals testified that "I think Dr. Knight has certainly got a role here and his explanation of what he feels." A.R.E. at p. 245, lines 3-21. Dr. Knight was not able to give an opinion as to the cause of the Ms. Shipp's injury. In fact, Dr. Knight had no opinion, and stated there was no way to prove, what

caused the injury and complaints of Ms. Shipp. The record, therefore, remains void of the required medical proof of causation through expert medical testimony.

Higher credibility and weight is to be given to the opinion of a treating physician as opposed to a physician or expert selected by the employer. South Central Bell Telephone Co. v. Aden, 474 So.2d 584, 593 (Miss. 1985). Ms. Shipp testified that she selected Dr. Knight, on her own, from a booklet of physicians covered under her private health insurance. A.R.E. at p. 105, lines 3-14. Dr. Boals testified that he evaluated Ms. Shipp at the request of her counsel. A.R.E. at p. 229, lines 7-8. Therefore, based upon South Central Bell, the Commission should give higher credibility and weight to the treating physician who was chosen by Ms. Shipp herself, not Thomas & Betts, and not the evaluator selected by her counsel.

The necessary proof to establish Ms. Shipp's allegation of a repetitive type injury can only be supplied by a qualified expert, a physician skilled in such areas of medicine, and knowledgeable of the particulars of the claimant's condition. Calhoun Apparel, Inc. v. Hobson, 770 So.2d 539, 542 (Miss. 2000). The Commission may not substitute its own understanding of the nature and causation of repetitive-motion injuries: this is not competent evidence. Id. The Commission may not bridge gaps in the failure of the medical testimony or to find causal connections to the employment where none exists. Olen Burrage Trucking Co. at 439. In Ms. Shipp's brief, she attempts to establish medical causation by reference to prior opinions of the Mississippi Workers' Compensation Commission. Such is not sufficient to meet the requisite burden of proof as established by

Mississippi Courts, whereby causation is to be established by medical expert testimony. Cole v. Superior Coach Corp., 106 So.2d 71, 72 (Miss.1958).

The record remains completely lacking of expert opinion testimony connecting Ms. Shipp's medical condition to an occurrence or series of occurrences at work. There is no competent medical evidence in the record that Ms. Shipp's bilateral carpal tunnel syndrome was a repetitive motion injury caused by her duties at her work. This lack of evidence is fatal to Ms. Shipp's claim for benefits herein, and substantiates the Administrative Judge's Order, the Full Commission Order, and the Order of the Circuit Court of Marshall County herein. Therefore, in applying the laws of the State of Mississippi, the Administrative Judge, the Full Commission and the Circuit Court of Marshall County all soundly found and opined that Ms. Shipp failed to meet her burden of proof showing the necessary medical causation between her work, and her injury, by a preponderance of the evidence.

## **VII. CONCLUSION**

Thomas & Betts properly raised the affirmative defense of the statute of limitations in its answer, procedurally making this a viable defense. Howard at p.258. Ms. Shipp testified that she was of the opinion she thought her injuries were work related in "early 2003", which was confirmed by the medical records of her treating physician, Dr. Knight, wherein he diagnosed her with bilateral carpal tunnel syndrome for the first time on March 17, 2003. At the time of this diagnosis, Ms. Shipp was working with Thomas & Betts. Ms. Shipp, being a reasonable person, testified that she thought her injuries were work related in "early 2003" (and not July 28, 2004, as stated in her Petition to Controvert), a time which bars her claim based upon the two year statute of limitations. M.C.A. § 71-3-35.

Additionally, Ms. Shipp did not prove by the necessary, requisite medical evidence the causation of her bilateral carpal tunnel syndrome injuries, and more specifically, she has not provided medical testimony and/or medical evidence required by the laws of the State of Mississippi to establish that her employment with Thomas & Betts caused or aggravated her bilateral carpal tunnel syndrome. This lack of proof is fatal to Ms. Shipp's claim herein, and the alleged injury was correctly determined to be not compensable by the Administrative Judge, the Full Commission and the Circuit Court of Marshall County.


Therefore, Thomas & Betts respectfully request that this Honorable Court affirm the Order of Administrative Judge, the Full Commission Order, and the Order of the Circuit Court of Marshall County, all of which adequately held that Ms. Shipp knew her apparent injuries of bilateral carpal tunnel syndrome existed on or before a date in March of 2003, that she knew her apparent condition of bilateral carpal tunnel syndrome may have been work related on a date in March of 2003, and that she reasonably should have known in March of 2003 that her injuries were disabling and therefore potentially created a compensable injury under the Mississippi Workers' Compensation Laws. Based upon the date of these determinations, Ms. Shipp is therefore time barred from bringing her claim herein for workers' compensation benefits as her Petition to Controvert was not filed until May 4, 2005, more than two years after the date she reasonably knew her injuries may have been work related. Additionally, Ms. Shipp did not meet her burden of proof, required through expert medical testimony, that her bilateral carpal tunnel syndrome was caused or aggravated by her employment with Thomas & Betts.

Based upon both stated issues (statute of limitations and medical causation), this claim is non-compensable and the Order of Administrative Judge, Order of Full Commission and Opinion and Order of the Circuit Court of Marshall County should all be affirmed.

Respectfully submitted this the 10<sup>th</sup> day of July, 2008.

LEITNER, WILLIAMS, DOOLEY  
& NAPOLITAN, PLLC

By:



M. LAUNA BRUBAKER  
Attorneys for Appellee  
254 Court Avenue, Second Floor  
Memphis, TN 38103  
(901) 527-0214

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was hand delivered to David L. Walker, P.O. Box 896, Southaven, MS 38671 on this the 10<sup>th</sup> day of July, 2008.



M. LAUNA BRUBAKER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief of Appellee was delivered via United States Standard Mail, postage prepaid, to The Honorable Andrew K. Howorth, 1 Courthouse Square, Ste. 201, Oxford, Mississippi 38655 on this the 14<sup>th</sup> day of July, 2008.

  
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M. LAUNA BRUBAKER