IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 2009-WC-006540-COA

RAYMOND D. LANGFORD — APPELLANT

VERSUS

SOUTHLAND TRUCKING, L.L.C., AND
MISSISSIPPI ASSOCIATED GENERAL CONTRACTORS
WORKERS' COMPENSATION FUND, INC. — APPELLEES

APPELLANT'S CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record for Appellee hereby certifies that the following listed persons have an interest in the outcome of this civil action. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

1. Raymond D. Langford, Appellant
2. William T. Reed, Attorney for Appellant
4. Robert H. Oswald, Law Firm of Oswald & Reed
5. Southland Trucking, L.L.C, Appellee
6. Honorable Ronnie T. Russell, Attorney for Appellee
7. Honorable Cindy Wilson, Administrative Law Judge (W/C)
8. Honorable William T. Harkey, Circuit Court Judge

Respectfully submitted,

RAYMOND D. LANGFORD,
Appellant

By: _____
William T. Reed, Attorney

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Statement of the Case

The Appellant, Raymond Langford, was employed as a truck driver for Southland Trucking, L.L.C. On or about July 25, 2001, late in the afternoon, and in preparation for washing his truck at the facility on the upcoming Saturday, Mr. Langford went to Metro Concrete, a business located on the same property and with the same ownership as Southland Trucking, to fill a container with Crete Brite, a chemical compound used to clean the wheels of the company truck.

The Crete Brite was stored in a 55 gallon drum. An employee of Metro Concrete, Richard Townsend, tilted the drum to pour the 100% strength Crete Brite into a plastic container being held by the claimant, Raymond Langford. **(RE 42)**

The Crete Brite was then diluted to 3% for the washing purposes. While pouring the 100% strength Crete Brite from the drum Raymond Langford got a big whiff, or inhaled the vapors. He also testified that he was splashed by droplets of the chemical. **(RE 42)**

Mr. Langford went home. The following morning he got up at 2:00 a.m. to report to work at 3:00 a.m., was short of breath and not feeling well. He made a load to Picayune, Mississippi, and upon his return he told his employer he was not feeling well, was having trouble breathing, went home, then went to Ocean Springs

Hospital where he was admitted to Intensive Care and put on oxygen. After a day and a half he was discharged, still on oxygen, went straight to Singing River Hospital in Pascagoula where he was readmitted to Intensive Care and he stayed there for the next 31 consecutive days. His condition was serious, severe and life threatening. **(RE 43-45)**

While in intensive care Mr. Langford's pulmonary specialist, Dr. Hiebert, who considered Langford to be in a near death condition, opted to perform a lung biopsy in an attempt to diagnose and treat his lung injury. **(RE 44-45)**

The tissue from the lung biopsy was then reviewed by a lung expert, Dr. James Waldron, who opined that, based on Mr. Langford's history of being exposed to Crete Brite and the tissue sample, that Langford's condition was consistent with chemical pneumonitis. **(RE 46)**

Mr. Langford had a pre-existing heart valve condition and had been treated by Dr. Pedone, a heart specialist. Dr. Pedone opined that the claimant's heart valve condition deteriorated because of the lung injury necessitating heart the valve replacement. **(RE 47)**

The Employer/Carrier's defense was shotgunned: they claimed that Mr. Langford either wasn't exposed to Crete Brite, was using the Crete Brite for his own purposes, or that Crete Brite didn't cause the injury, and they hired Experts, none of whom ever saw

Mr. Langford or examined him, to provide affidavits to that effect.

At the conclusion of the hearing the Administrative Law Judge requested proposed Findings of Fact and Conclusions of Law from both parties. Her Order essentially adopted the Findings of Fact and Conclusions of Law of the Employer/Carrier, Southland Trucking, L.L.C.

Mr. Langford appealed to the full Workers' Compensation Commission, argued that the Findings of Fact and Conclusions of Law were arbitrary, capricious, and not supported by substantial evidence and the Commission affirmed.

Mr. Langford then appealed to the Circuit Court of Jackson County and the Court, while receptive to a higher standard of review of Findings of Fact and Conclusions of Law adopted solely from one party, determined that substantial evidence existing supporting the Commission's Findings of Fact.

SUMMARY OF THE ARGUMENT

Raymond Langford, in the course and scope of his employment, was exposed to the chemical compound Crete Brite as a part of his job duties. Within thirty-six hours he was in intensive care suffering respiratory failure and ultimately heart valve failure.

Under the Mississippi Workers' Compensation Act the Employer/Carrier is obligated to provide temporary total disability benefits and pay for medical expenses flowing from such an injury.

Claimant's legal position and the purpose of this appeal is to make one last attempt to have the Mississippi Workers' Compensation Act applied to the evidence as it was intended by the Act and applicable Mississippi case law.

At the trial of this matter before the Mississippi Workers' Compensation Administrative Law Judge at the conclusion of the hearing the ALJ requested proposed Findings of Fact and Conclusions of Law from the parties. She subsequently adopted the Employer/Carrier's Findings of Fact and Conclusions of Law as her Opinion.

On appeal to the full Commission it was affirmed without Opinion.

On appeal to the Circuit Court of Jackson County the Court, after finding that the ALJ had, in fact, adopted the Findings of Fact and Conclusions of Law of the Employer/Carrier as her Opinion failed to apply Mississippi Workers' Compensation law as follows:

(1) A heightened Standard Of Review when the ALJ adopts the Findings of Fact and Conclusions of Law of one party;

(2) An injury arising from the course and scope of employment is not required to be the sole and only cause of the injury;

(3) Deference is afforded to the claimant's treating physicians opinions and findings as opposed to witnesses hired for trial purposes; and

(4) Findings are clearly erroneous when the reviewing court is left with the definite and firm conclusion that a mistake has been made by the Commission in its Findings of Fact and its application of the Act.

Mr. Langford asserts that once the evidence is fairly evaluated, he receives the inferences entitled to him under the Act, the Court appropriately evaluates the testimony of the treating physicians and all the medical evidence, that this Court must reverse and award Temporary total Disability and medical benefits as provided by the Mississippi Workers' Compensation Act.

ARGUMENT

I.

WHETHER THE TRIAL COURT, ACTING AS AN APPEALS COURT, APPLIED AN INCORRECT STANDARD OF REVIEW BASED ON THE ADMINISTRATIVE LAW JUDGE'S ADOPTION OF THE EMPLOYER/CARRIER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND THE COMMISSION'S AFFIRMANCE OF THE ORDER WITHOUT EXPLANATION.

On Appeal the Circuit Court Judge, after reviewing the Record and the Briefs of both parties, determined that the

Administrative Law Judge of the Workers' Compensation Commission had adopted, almost verbatim, the findings and conclusions of the Employer/Carrier's Brief submitted prior to the hearing of May 17, 2007.

Claimant asserts that the Circuit Court, after quoting applicable law, failed to perform the required examination of the Record. The Circuit Judge found:

> Langford argues on appeal that this deferential standard of review is not warranted here since the ALJ adopted, almost verbatim, the findings and arguments set forth in Southland Trucking's trial brief submitted prior to the hearing of May 17, 2007. In such circumstances, it is necessary to view the challenged findings of fact with a more critical eye to insure that the Commission has adequately performed its function. *Omnibank of Mantee v. United Southern Bank*, 607 So.2d 76, 82-83 (Miss. 1992); *Greenwood Utilities v. Williams,* 801 So.2d 783, Sections 10-15 (Miss.Ct.App. 2001). While the deferential standard is lessened, it is not *de novo*. *Rice Researchers, Inc. v. Hiter, et al,* 512 So.21d 1259, 1265 (Miss. 1987). With these considerations in mind this Court has thoroughly examined the record in this matter and, even utilizing a relaxed standard of review, there exists on the whole substantial evidence supporting the Commission's findings of fact and decision in this case. (**R. 112**)
> (and)
> The conclusion of the ALJ and the Commission that Langford failed to satisfy his burden of proof, that his injury and condition arose out of and in the course of his employment, is supported by substantial evidence and therefore must be affirmed. (**R. 112**)

The problem with the Judge's application of the Standard of Review is that the Judge relied upon the case law which failed to consider that, in essence, the ALJ's opinion was nothing more than the Employer/Carrier's Trial Brief.

Mr. Langford has not been afforded a full, fair, impartial review of the evidence and the application of the law based on that evidence. When the Trial Court accepted the conclusion of the ALJ and the Commission he found "substantial evidence" when the only evidence considered was that submitted by the employer/ carrier:

> The manner and mechanism of injury was hotly contested, as was the medical testimony in regard to the cause of the injuries claimed to be work related. The supreme Court has held that whenever medical expert testimony is conflicting the commission will be upheld whether the award is for or against the claimant. *Kersh v. Greenville Sheet Metal Works*, 192 So.2d 266, 268 (Miss. 1966). The conclusion of the ALJ and the Commission that Langford failed to satisfy his burden of proof, that his injury and condition arose out of and in the course and scope of his employment, is supported by substantial evidence and therefore must be affirmed. (Circuit Court's Order Affirming Decision of Workers' Compensation Commission) (**R. 112**)

The Supreme Court and the Court of Appeals have held that when a trial judge merely adopts the proposed findings of fact and conclusions of law of a litigant that the appeals court has:

> * * * "*no choice but to 'engage in much more careful analysis of adopting findings that in cases where the findings and conclusions have been authorized by the trial judge himself.'" Omnibank*, 607. So.2d at 83. The Supreme Court stated that "{w}e must keep a keen eye for gratuitous slants." and that "our duty of deference' to such findings is necessarily lessened.'" *Id.*. "At the very least, we may assume such findings have given the party drafting them the benefit of the favorable inference that may be found in the facts." *Id.*
> **Greenwood Utilities v. Williams** 801 So.2d 783, 788 (Miss.Ct.App. 2001).

> Findings that tend against the drafting party would seem as solid as can be. We do not wish to appear insensitive to the burdens the trial court carries. The course chosen here increases the burden on this Court as an appellate court, and we "must view the challenged findings of fact and the appellate record as a whole with a more critical eye to insure that the trial court has adequately performed its function." *Rice Researchers,* 512 So.2d at 1265; *see also Tricon Metals & Services, Inc. v. Topp,* 516 So.2d 236, 239 (Miss. 1987)
> **Omnibank of Mantee v. United Southern Bank,** 607 So.2d 76, 82-83 (Miss. 1992)
>
> See Also: **Mississippi Department of Wildlife V. Brannon,** 943 So.2D 53 (Miss. Ct. of App. 2006).

Claimant asserted before the full Commission and before the Circuit Court that the ALJ's opinion which the Commission affirmed without opinion was fraught with error and unsubstantiated allegations. The ALJ's opinion applied the very opposite of the standard. It accepted the Employer/Carrier's position as gospel and looked no further. In **Waffle House, Inc. v. Allam** 976 So.2d 919 @921-22 (Miss. Ct. App. 2002) this Court clearly set forth that the entire evidence must be reviewed:

> "[A] finding is clearly erroneous when, although there is some slight evidence to support it, the reviewing court on the entire evidence is left with ***922** definite and firm conviction that a mistake has been made by the Commission in its findings of fact and in its application of the Act." *J.R. Logging v. Halford,* 765 So.2d 580, 583 (Section 13)(Miss.Ct.App.2000). "Where no evidence or only a scintilla of evidence supports a Workers' Compensation Commission decision, this Court does not hesitate to reverse." *Foamex Prods. Inc. v. Simons,* 822 So.2d 1050, 1055 (Section 11)(Miss.Ct.Spp.2002). **Waffle House v. Allam,** supra.

The Circuit Court (following the ALJ and the Commission) accepted the Employer/Carrier's Experts who never examined Mr. Langford and who were **hired for trial purposes** as the only competent medical experts and completely ignored the claimant's treating physicians, including a respiratory specialist, cardiologist, and pathologist.

The evaluation does not follow applicable Mississippi Workers' Compensation Law which favors treating physicians:

Department of Health/Ellisville State School v. Stinson, 988 So.2d 933, 934 (Miss.Ct.App.2008), held:

> We take note that a treating physician's opinion is entitled to more weight that a physician who examines the individual solely for the purpose of testifying. *Clements v. Welling Truck Serv., Inc.* 739 So.2d 476, 478 n. 1 (Miss.Ct.App. 1999)

Hinds County Board of Supervisors v. Johnson, 977 So.2d 1193, 1198, (Miss.Ct.App.2007), held:

> "our case law permits courts [and administrative judges] to favor the testimony of treating physicians." As such, the administrative judge gave greater weight to Dr. Ellis's opinion and found that Johnson suffered a work-related injury.

Cooper Tire & Rubber Co. v. Harris 837 So.2d 789, 792-93, (Miss. 2003), held:

> The medical evidence is not wholly conclusive; however, Harris is only required to prove his case by a preponderance of the evidence. Our case law permits courts to favor the testimony of treating physicians. Dr. Mansel's testimony that smoking would not cause the fibrotic scarring that led to Harris's pneumonia was uncontested. We find that the Commission's

findings of a compensable injury is supported by substantial evidence.

The evidence has never been evaluated giving due deference to the favorable evidence of treating physicians. This gaping flaw alone requires that this case be reversed.

II.

WHETHER THE DECISION OF THE MISSISSIPPI WORKERS' COMPENSATION COMMISSION DENYING CLAIMANT TEMPORARY TOTAL DISABILITY AND MEDICAL BENEFITS IS ARBITRARY, CAPRICIOUS AND BASED UPON ERRORS OF LAW AND UNSUPPORTED FINDINGS OF FACT.

The Administrative Law Judge's findings adopted from the Employer/Carrier's brief almost verbatim are not consistent with the Record. Dr. Timothy Hiebert, the pulmonary specialist, testified that Mr. Langford had a dangerously low oxygen reading, his respiratory status declined, and at the time of his assessment:

> His condition was serious, severe, and life threatening. **(RE 48)**

> And, you know, at the time on my assessment, I felt that the ammonia/acid chemical exposure caused hypoxemia and then had a cardiac decompensation on the basis of that. He got admitted to the hospital, and then ended up, you know, spending a long time on the vent. **(RE 48)**

The pulmonary specialist, Dr. Timothy Hiebert, testified that in an attempt to identify the injury or disease process occurring in Raymond Langford's lungs, that he took the unusual

and further invasive step of having a biopsy of the lung tissue taken so that it could be evaluated by a lung expert. The biopsy was evaluated by Dr. Waldron who determined that the tissue:

> A. I thought that tissue showed acute lung injury, which would be classifiable as diffuse alveolar damage, organization phase, with elements of bronchiolitis obliterans. And I thought that that pattern and the clinical setting certainly was consistent with some sort of inhalational injury to the lungs.
>
> * * * Q. What was it about your interpretation of the evidence that you reviewed that made you reach the conclusion that it was a chemical pneumonitis, for lack of a better term?
>
> A. Well, I wouldn't have indicated that without the history.
>
> Q. Okay.
>
> A. It turns out that the diffuse alveolar damage pathology is actually, you know, it's just a pattern of lung injury. And one can see that pattern of lung injury in a wide variety of circumstances.
>
> Q. I understand. So it's the combination of what you were seeing on the slides and the history of Mr. Langford ...
>
> A. Yes.
>
> Q. ** as relayed to you through his physician that he had suffered this chemical exposure in the recent past.
>
> A. That's correct. Certainly, it would certainly be consistent with that etiology if that was felt to be the precipitating factor on clinical grounds.
>
> **(RE 49-52)**

Dr. Timothy Hiebert testified that the claimant's oxygen concentration was so low when first seen at Singing River Hospital that the oxygen deprivation alone could have caused heart failure. **(RE 45)**

Dr. Heitzman, the treating physician at the Ocean Springs hospital testified:

> By history from Mr. Langford, some 24 to 36 hours after the chemical exposure is when he first started having shortness of breath. (Deposition of Heitzman, Page 15, Line 20-24)
>
> Claimant had presence of curly B lines on his chest film, a finding of congestive heart failure in the lower part of his lungs, alveolar edema, when he was discharged from the hospital (Deposition of Heitzman, Page 17, Lines 14-25)
>
> There could be other causes of the patient's pulmonary problems other than acute chemical exposure...but in this case Dr. Heitzman didn't think it likely. (Deposition of Heitzman, Page 18, Lines 20-24) And they did not find an infectious etiology. (Page 19, Line 17)
>
> From the history in the discharge summary: "Holding a can. And it says for a cleaner. That's probably of cleaner. And he got the cleaner on his hand. And he inhaled vapors." (Deposition of Heitzman, Page 22, Lines 12-14)
>
> **(RE 53)**

Dr. Pedone, who was Mr. Langford's cardiologist specialist, also testified that he had seen Mr. Langford within the last year, before the Crete Brite incident, that Mr. Langford had mild to moderate heart valve disease, and that at the time heart surgery was not recommended:

> But I think it's possible beyond a reasonable doubt that the lung problem could have aggravated the valve problem, not necessarily the coronary problem, but definitely could have made the valvular heart problem progress at a more rapid rate than it would normally progressed, because usually, you know, one year is pretty rapid progression of the valves.

The normal progression of heart surgery is usually years, **(RE 47)**:

Q. And is it a fair characterization that basically after July of '01, Mr. Langford's condition worsened to the point that ultimately he had to have surgery, and once he had the surgery, the situation improved?

A. Yeah, I didn't get a lot of follow-up with the guy because you know, I left the area, but that's a fair, you know, thought process.

(RE 54)

Dr. Pedone received a copy of Dr. Horowitz 11-18-2001 surgery consultation Report, **(RE 55, 57-58)** and testified further:

Q. What was the purpose of the surgery?

A. To correct, you know, the leakage of the valves, to bypass the heart artery so he wouldn't have any more heart failure.

Q. And mechanically how was that done? And I understand what a bypass does, but how do you repair the valve?

A. Well, they can either do valve repair or valve replacement; it depends on the shape of the valve. You know. and it's up to the surgeon at the time of surgery, you know. And again, I don't know what - - I have to look at the op report to see what Horowitz really did.

Q. Okay.

A. He will put it at the top. If I remember, right, he put two new valves in and then did the bypass.

Q. From the time you first saw Mr. Langford in the hospital in Ocean Springs July 26th, '01 until he had the surgery for the valve replacement and the bypass in November of '01, do you have an opinion as to whether or not he was disabled to the point where he was unable to work?

A. Yes, he was. He was real sick. He was.

Q. And even assuming then a good result and a good recovery from the surgery in November '01, and if he was a very good patient, had a very good result, how long after that would it have been before you would have expected him to return to work?

A. Somewhere between six weeks and three months usually, you know.

(**RE 55, 56**)

Q. Okay. Would you please state whether or not you have sufficient medical facts to formulate an opinion in terms of reasonable medical certainty as to whether or not this patient sustained an injurious exposure to chemicals in July of 2001 or at any other time?

A. The only - - the main evidence we have is the lung biopsy. Okay, that would be the thing I'm hanging my hat on. **(RE 57)**

Q. You are saying you do have sufficient medical facts?

A. Yes, that lung biopsy is pretty specific. **(RE 57)**

* * * ...And the biopsy is the only reason I'm saying that that's what it could be, a specific biopsy finding. **(RE 57)**

* * *

A. The only way I can answer the question, it's a very specific biopsy. It's like saying does somebody have cancer. We don't know. We come back and you do a breast biopsy and the diagnosis comes back as cancer, then they have cancer. There's no doubt about that.

Q. So there's no doubt in your mind.

A. It's a specific diagnosis based on this biopsy.

Q. There's no doubt in your mind based on this biopsy that this patient had a chemical pneumonitis, and that rules out all other causes of the patient's pulmonary problems.

* * *

A. . . . It's more likely that it was chemical based on that histology, based on the way those cells look underneath the microscope. That's just a reasonable, you know, opinion. **(RE 59)**

The ALJ, in her opinion, gives lip service to this medical condition:

"Claimant testified that he was in a coma and on life support. He has no recollection of this hospital stay. He remained hospitalized for an extended period of time and subsequently was re-admitted for heart surgery." (R. 188)

The significance of this medical condition and the Judge's failure to comprehend it's effect on the claimant is crucial. The Judge, by adopting the employer/carrier's credibility argument and justification finds that the claimant lied about how the injury occurred, lied about where he stored the Crete Brite in his truck, and was just generally not believable.

These credibility determinations are being forced up individual at a time when his oxygen level was low enough that he developed heart failure simply on the basis of low oxygen levels when he was near death and significantly impaired. **(RE 57)**

The employer/carrier and the Administrative Law Judge attempted to hold the claimant to total recall at a time when he had hardly enough oxygen to sustain life, much less mental recall, and this was at the start of a hospital stay that lasted thirty one days.

Judge Wilson in her opinion on Page 3 (First Sentence of Third Paragraph) found that claimant, a week prior to his accident had acquired the chemical to clean his truck. This statement is not found in the record and is directly contradicted by claimant's testimony. **(R. 25)**

The Judge at page 5 of her opinion questions the claimant's credibility about obtaining the Crete Brite so that he could wash his truck on the weekend. However, it was stipulated (Stipulation No. 5) **(R. 25)** that the vehicles were washed on the weekend and the Judge in a convoluted attempt to discredit claimant again questions based on his deposition Mr. Langford's time line in part based on a statement claimant allegedly made to Dr. Pedone on August 6th while he was still in Intensive Care, under oxygen, and in his words still in a coma.

Claimant does not, as the Judge found, (through the Employer/ Carrier's Brief) tell three different stories. Mr. Langford consistently stated that he was exposed late afternoon, went to Picayune the following morning, and then went into Intensive Care.

These so called discrepancies between the claimant's testimony at the hearing and his deposition taken February 1, 2002, simply do not exist.

The Employer/Carrier then took claimant's testimony and pitted it against historical statements of the medical records from the time period when the Claimant was in Intensive Care, on oxygen, and in and out of a coma, in an attempt to create these discrepancies.

An attempt to discredit based on failure to have total recall after being on oxygen and thirty one days of consecutive Intensive Care can only be reached by an employer/carrier accepting only evidence in its favor and ignoring all evidence to the contrary.

The only person testifying to controvert the plaintiff's testimony is Ms. Philbrook who admits her interactions with the claimant was during his intensive care stay and at the beginning of the claimant's hospitalization. **(RE 60-65)**

The Administrative Law Judge in her opinion **(R. 25)** adopts the Employer/Carrier's argument that the claimant's testimony was inconsistent about obtaining the Crete Brite, when he did, ultimately opining that the claimant stated South Land Trucking was locked on the weekends. The claimant actually testified that it

was Metro Concrete, the sister company and the location that he obtained the Crete Brite from that was locked on the weekends. **(RE 66)**

In a further attempt to discredit the claimant the Administrative Law Judge adopted the Employer/Carrier's position that the claimant was attempting to procure the Crete Brite for his own use because it was in the back of his truck. When Ms. Philbrook, an employee of the employer, took the claimant his check at the hospital while he was in the Intensive Care Unit, according to Ms. Philbrook, the claimant's wife told her the Crete Brite was still in the claimant's pickup truck in the hospital parking lot. **(RE 64-65)**

Ms. Philbrook called Eddie Jordan, a co-employee, but ultimately retrieved the container herself and testified:

Q. Do you recall what kind of container the Crete Brite was in?
A. Not exactly, no, not now. I know it was in a plastic container. That's all.
Q. A plastic container?
A. That's all I remember.
Q. Do you recall how heavy it was?
A. It was heavy enough - it was kind of heavy. It took two hands for me to pick it up and lift it in the car.
(RE 65)

Contrary to the Employer/Carrier's position and the Administrative Law Judge's incorrect findings, since the container was heavy, this indicates that the Crete Brite had not been used and further since the Employer/Carrier took possession of the

container, if it had been empty, it was their burden to come forward with testimony that the container was empty. No such testimony is in the record.

The employer/carrier and the Judge, through adopting their position also attempts by innuendo and conjecture to allege that the claimant had the Crete Brite for his own use. There is simply not one word of proof in the record to justify this attempt to deny compensability.

The Administrative Law Judge's findings of fact to discredit the claimant simply do not withstand scrutiny and the claimant proved through the testimony of Drs. Hiebert, Waldron and Pedone that his exposure to Crete Brite caused a lung injury which caused and contributed to or aggravated a condition which caused a heart valve replacement.

In **Imperial Palace v. Wilson**, 960 So.2d, 549, 553, (Miss. 2006) the Court held:

> In Order for Wilson's claim to be compensable, his injury need only be connected to his employment. *Sharpe v. Choctaw Elecs. Enters.*, 767 So.2d 1002, 1005 (Miss. 2000). An employee's work does not need to be the "sole source of the injury." *Id.* (quoting *Chapman v. Hanson Scale Co.*, 495 So.2d 1357, 1960 (Miss. 1986). The Mississippi Supreme Court specifically noted: "Injury...arises out of an in the course of employment even when the employment merely aggravates, accelerates or contributes to the injury." *id.* (quoting *Chapman*, 495 So.2d at 1360).

The Court held in **Union Camp Corporation v. Hall**, 955 So.2d 363 (Miss. 2006):

> Proof of causation is sufficient even it if is *minimal* or reasonably incidental to employment. *Id.* Employment need not be the sold cause of injury. *Id.* If Hall's employment contributed to her condition, the injury is compensable. *Sharpe v. Choctaw Electronics Enterprises.* 767 So.2d 1002 (Section 13) (Miss. 2000).
> * * *
> The Workers' Compensation Act is to be construed liberally in favor of claimants, likewise for paying benefits for a compensable injury. *Sharpe*, 767 So.2d at (Section 18). To fulfill the purposes of the Workers' Compensation Act, we should resolve doubtful cases in favor of compensation. *Id.* at (Section 19). Based on the "broad policy considerations undergirding the Workers' Compensation Act and the liberal construction to be given the compensation statutes," the injured worker should prevail when the evidence is "even." *Nichols-Banks v. Lenscrafters*, 814 So.2d 808 (Section 21)(Miss. Ct.App. 2002). **Union Camp, supra, @ 371.**

See also **Financial Institute Ins. Service v. Hoy**, 2000, 770 So.2d 994, 997 (Miss. 2006):

> Workers' compensation law is to be liberally and broadly construed, resolving doubtful cases in favor of compensation so that the beneficial purposes of the law may be accomplished.
> Based on the broad policy considerations undergirding the workers' compensation law and the liberal construction to be given the compensation statutes, the injured worker should prevail when the evidence is even. *Union Camp Corp. v. Hall*, 2006, 955 So.2d 363, rehearing denied, certiorari dismissed 956 So.2d 228. Workers' Compensation, Key 1408.
> In a workers' compensation case, even though the testimony may be somewhat ambiguous as to causal connection, all that is necessary is that the medical findings support a causal connection. **Moore v. Independent Life and Accident Ins. Co.**, 2001, 788 So. 2d 106.

Dr. Pedone testified that after claimant's surgery in November, 2001, he should have reached maximum medical recovery

within six weeks to three months, or approximately March of 2002. Claimant testified that he attempted to return to Southland Trucking to work but was rejected. He was unable to find employment until September, 2002.

When these Findings of Fact and Conclusions of Law were made by the ALJ and adopted by the Commission without Opinion are viewed skeptically based upon the ALJ's adoption of the Employer/Carrier's Findings of Fact and Conclusions of Law it is clear that these findings are arbitrary, capricious and not supported by the Record or applicable law. Specifically (1) The ALJ's credibility determination comes solely from the Findings of Fact and Conclusions of Law of Employer/Carrier; (2) The ALJ's evaluation of the medical testimony comes solely from the Findings of Fact and conclusions of Law of the Employer/Carrier; (3) The causation analysis based on 72-3-7 MCAA comes solely from the Findings of Fact and Conclusions of Law of the Employer/Carrier.

The claimant has not been afforded a fair and impartial hearing where the evidence has been critically analyzed. The claimant was not afforded the favorable inferences afforded by the Mississippi Workers' Compensation Act and this Court "must view the challenged Findings of Fact and the appellate Record as a whole with a more critical eye to insure that the trial court has adequately performed its function." **Omnibank of Mantee v. United Southern Bank**, 607 So.2d 76, 82-83 (Miss. 1992).

After a thorough review of the Record this matter must be reversed and Langford awarded temporary total disability and medical benefits.

III.

WHETHER THE MISSISSIPPI WORKERS COMPENSATION COMMISSION ERRED AS A MATTER OF LAW BY FINDING THE CLAIMANT'S LUNG AND HEART VALVE INJURY DID NOT ARISE OUT OF THE COURSE AND SCOPE OF HIS EMPLOYMENT WITH SOUTHLAND TRUCKING, L.L.C., PURSUANT TO 71-3-7 OF THE MISSISSIPPI CODE OF 1972 AS AMENDED AND ANNOTATED.

Section 71-3-7 of the Mississippi Code of 1972 as Amended and Annotated entitles an employee covered by the Act who suffers injury or occupational disease:

> Compensation shall be payable for disability or death of an employee from injury or occupational disease arising out of and in the course of employment, without regard to fault as to the cause of the injury or occupational disease. An occupational disease shall be deemed to arise out of and in the course of employment when there is evidence that there is a direct causal connection between the work performed and the occupational disease.
>
> Where a preexisting physical handicap, disease, or lesion is shown by medical findings to be a material contributing factor in the results following injury, the compensation which, but for this paragraph, would be payable shall be reduced by that proportion which such preexisting physical handicap, disease, or lesion contributed to the production of the results following the injury. **Section 71-3-7 of the Mississippi Code of 1972 as Amended and Annotated.**

Case law has expanded this coverage to aggravation of a preexisting condition:

> On certiorari review, the Supreme Court, Waller, J., held that evidence was not sufficient to find that claimant's lung disease was not causally linked to his exposure of chemicals at place of employment.
> * * *
> The work connection test arises from Miss.Code Ann. Section 71-3-7 (1972). The worker's employment, however, need not have been the sole source of the injury. The claim is compensable if the injury or death is in part work connected. Injury or death arises out of and in the course of employment even when the employment merely aggravates, accelerates or contributes to the injury.
> * * *
> It is well established that the provisions of Mississippi Workers' Compensation Statute are to be construed liberally in favor the claimant and in favor of paying benefits for a compensable injury.
> * * *
> It is undisputed that Sharpe * * * has demonstrated the presence of a lung ailment and/or shortness of breath. **Sharpe v. Choctaw Electronics Enterprises, 767 So.2d 1002 (Miss. 2000)**

Sharpe, supra, made this aggravation applicable to a lung injury or shortness of breath, and **Spencer v. Tyson Foods, Inc.**, 869 So.2d 1069, 1074 (Miss. 2004), determined that the claimant's employment was a substantial contributing cause of her disability:

> The exact cause of Spencer's *primary* medical problem was not, and the physicians testified could not be, ascertained. However, all three doctors who treated Spencer opined that her work aggravated her spondylosis, thereby contributing to the injury. Accordingly, there was substantial evidence to support the Commission's finding that Spencer's employment was a substantial contributing cause of her disability. **Spencer v. Tyson Foods, Inc.**, 869 So.2d 1069 (Miss. 2004).

When the Administrative Law Judge adopted the Employer/ Carrier's Findings of Fact and Conclusions of Law as her opinion

she made no independent analysis to explain why Langford's lung injury and aggravation of his heart valve condition did not fall within the confines of Section 71-3-7 MCAA.

A fair reading of the Record confirms that Langford was exposed to Crete Brite, a substance used during the course and scope of his employment on weekends.

Stipulation No. 5 in the ALJ's Opinion"

> **5. If called, Mr. Richard Townsend's testimony would corroborate claimant's testimony that every weekend they would wash their company vehicles and were paid by the company in the amount of $40.00; (R. 186)**

After Mr. Langford inhaled the Crete Brite within thirty six hours he was in intensive care. Dr. Hiebert, his respiratory specialist, based on Mr. Langford's history, his very low oxygen concentration level and lung tissue obtained by biopsy, commenced treating him on a diagnosis of chemical pneumonitis.

Dr. Waldron's analysis of the lung tissue was consistent with chemical pneumonitis, again based on history. Dr. Pedone, Langford's cardiologist, testified that Mr. Langford had previously been treated for a heart valve condition which would normally have not required surgery for years.

Dr. Pedone, based on Langford's history, the lung biopsy and the rapid deterioration of Langford's condition causally connected the lung injury as an aggravation and contributing factor to the need for the valve replacement.

This Court in **Imperial Palace v. Wilson**, 960 So.2d, 549, (Miss. 2006) held:

> In Order for Wilson's claim to be compensable, his injury need only be connected to his employment. *Sharpe v. Choctaw Elecs. Enters.*, 767 So.2d 1002, 1005 (Miss. 2000). An employee's work does not need to be the "sole source of the injury." *Id.* (quoting *Chapman v. Hanson Scale Co.*, 495 So.2d 1357, 1960 (Miss. 1986). The Mississippi Supreme Court specifically noted: "Injury...arises out of an in the course of employment even when the employment merely aggravates, accelerates or contributes to the injury." *id.* (quoting *Chapman*, 495 So.2d at 1360).

The Court held in **Union Camp Corporation v. Hall**, 955 So.2d 363, 369 (Miss. 2006):

> Proof of causation is sufficient even it if is *minimal* or reasonably incidental to employment. *Id.* Employment need not be the sold cause of injury. *Id.* If Hall's employment contributed to her condition, the injury is compensable. *Sharpe v. Choctaw Electronics Enterprises.* 767 So.2d 1002 (Section 13) (Miss. 2000).
> * * *
> The Workers' Compensation Act is to be construed liberally in favor of claimants, likewise for paying benefits for a compensable injury. *Sharpe*, 767 So.2d at (Section 18). To fulfill the purposes of the Workers' Compensation Act, we should resolve doubtful cases in favor of compensation. *Id.* at (Section 19). Based on the "broad policy considerations undergirding the Workers' Compensation Act and the liberal construction to be given the compensation statutes," the injured worker should prevail when the evidence is "even." *Nichols-Banks v. Lenscrafters*, 814 So.2d 808 (Section 21)(Miss. Ct.App. 2002). **Union Camp, supra, @ 371.**

See also **Financial Institute Ins. Service v. Hoy**, 2000, 770 So.2d 994, 997 (Miss. 2006), citing *Marshall Durbin Cos. v. Warren* 633 So.2d 1006, 1010 (Miss. 1994):

> * * * Workers' compensation law is to be liberally and broadly construed, resolving doubtful cases in favor of compensation so that the beneficial purposes of the law may be accomplished. **Financial Institute Ins. Service v. Hoy**, 770 So.2d 994 (Miss. 2006.

and:

> In a workers' compensation case, even though the testimony may be somewhat ambiguous as to causal connection, all that is necessary is that the medical findings support a causal connection. ***Moore v. Independent Life and Accident Ins. Co.***, 2001, 788 So. 2d 106. Citing *Sperry Vickers, Inc. v. Honea*, 394 So.2d 1380, 1385 (Miss. 1981).

The Administrative Law Judge by adopting the Employer/ Carrier's brief as her opinion simply fails to explain away the claimant's testimony, the corroboration by the stipulation, and the testimony of the treating physicians, whose opinions are entitled to greater weight than those of the Employer/Carrier who were hired solely for trial purposes.

This decision is not supported by the facts, fails to apply appropriate Mississippi Workers' Compensation law and should be reversed.

CONCLUSION

This matter should be reversed and the claimant, Raymond Langford, should be awarded Temporary Total Disability benefits and medical benefits, or in the alternative remanded to the Mississippi Workers' Compensation Commission for a separate, independent,

detailed analysis of the Record so that an impartial determination of the facts and an appropriate application of the law can be made. Mr. Langford, has not been afforded a fair, independent, review of the facts and then to have the law impartially applied to these facts. This matter should be reversed.

Respectfully submitted, this the 15th day of September, 2009.

RAYMOND D. LANGFORD, Claimant

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CERTIFICATE OF SERVICE

I, William T. Reed, do hereby certify that I have this day mailed a true and correct copy of the above and foregoing **APPELLANT'S BRIEF** to Honorable Ronald T. Russell, COPELAND, COOK, TAYLOR & BUSH, Post Office Box 10, Gulfport, MS 39501-0010, and to Honorable William T. Harkey, Circuit Court Judge, Jackson County Courthouse, Post Office Box 998, Pascagoula, MS 39568-0998.

This the 15th day of September, 2009.

WILLIAM T. REED