COMMONWEALTH OF KENTUCKY
SUPREME COURT
FILE NO. 2010-SC-000438

PEABODY COAL COMPANY — APPELLANT

v.

JOE MARTINEZ;
HON. R. SCOTT BORDERS, ALJ; AND,
WORKERS' COMPENSATION BOARD — APPELLEES

* * * * *

Appeal from Court of Appeals of Kentucky
No. 2009-CA-000927-WC
(Workers' Compensation Board No. 02-01692)

BRIEF FOR THE APPELLANT

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing was mailed to the following this 22nd day of September, 2010 to: Hon. Thomas E. Springer, 18 Court Street, Madisonville, KY 42431; and, the Hon. R. Scott Borders, Administrative Law Judge, 8120 Dream Street, Florence, KY 41042; Hon. Christopher H. Smith, Office of Workplace Standards, Kentucky Labor Department, 1047 U.S. 127 South, Frankfort, KY 40601; Workers' Compensation Board, 657 Chamberlin Avenue, Frankfort, KY. 40601; and, Hon. Samuel P. Givens, Jr., Clerk, Kentucky Court of Appeals, 360 Democrat Drive, Frankfort, KY 40601. The original and ten copies were hand-delivered and/or mailed via overnight express mail this day to the Clerk, Supreme Court Commonwealth of Kentucky, 209 Capitol Building, 700 Capital Avenue, Frankfort, KY 40601.

COUNSEL FOR APPELLANT

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INTRODUCTION

This is a workers' compensation appeal in a coal workers' pneumoconiosis claim wherein the appellee, Martinez, was found not to have coal workers' pneumoconiosis. The dismissal of the claim was affirmed by the Workers' Compensation Board, but was reversed by the Court of Appeals declaring the that KRS 342.316 is unconstitutional because it puts a burden on those who make a claim for coal worker's pneumoconiosis that it does not put on those workers who claim other occupational lung diseases thereby violating the equal protection clause of the U.S. and Kentucky Constitution.

STATEMENT REGARDING ORAL ARGUMENT

Since the Court of Appeals panel which heard this case declared the coal workers' pneumoconiosis part of the Kentucky Workers' Compensation Statute to be unconstitutional under equal protection and since this Court has previously ruled that KRS 342.316 was constitutional under both due process and equal protection, this Appellant does request oral argument. We request oral argument because of the seriousness of a declaration that a Statute or part of the Statute is unconstitutional. This appellant believes oral argument would be helpful to the Court in deciding these issues presented.

STATEMENT OF POINTS AND AUTHORITIES

STATEMENT OF THE CASE

The Kentucky Court of Appeals Opinion declared KRS 342.316 unconstitutional in the burden it establishes for those who make a claim for coal workers' pneumoconiosis (CWP). We will summarize first the procedural background followed by the factual background in this case.

PROCEDURAL BACKGROUND

Martinez filed his Application for Resolution of Coal Workers' Pneumoconiosis claim on October 24, 2002. Medical evidence was presented. The claim was dismissed by the Administrative Law Judge (ALJ). Martinez filed an Appeal with the Board and the dismissal was affirmed. He appealed on the basis of the constitutionality of KRS 342.316(3). That issue was pending before this Honorable Court in the case of Hunter Excavating v Bartrum, 168 S.W.3d 381 (Ky. 2005), at that time. Martinez's claim was held in abeyance by the Court of Appeals.

When this Court handed down its decision in Bartrum, supra, the Court vacated the Board's decision and remanded the case to the Board and the ALJ. The Court found that Martinez had been denied the opportunity to submit additional evidence which might overcome the consensus reading the ALJ and Board had accepted. A new Board regulation was enacted allowing the parties to ask for the x-rays of the two doctors and to submit one additional reading.

Before the ALJ once again, Martinez requested the x-ray but submitted no additional medical evidence. The ALJ found that Martinez had failed to overcome the consensus classification as no new evidence had been presented. After the new ruling from the ALJ, which was affirmed by the Board, Martinez filed an Appeal before the

Court of Appeals arguing that while the Supreme Court had dealt with "due process" in Bartrum, supra, and "equal protection" as it pertained to injuries versus coal workers' pneumoconiosis in the case of Durham v. Peabody Coal Company, 272 S.W.3d 192 (Ky. 2008), the Courts had not dealt with equal protection as it pertained to the way coal workers' pneumoconiosis claims were litigated under KRS 342.316 and KRS 342.732 as opposed to other occupational lung diseases. The Court of Appeals reversed the decision of the Workers' Compensation Board and remanded the case for further proceedings consistent with their opinion which was that Martinez was denied equal protection under the law and that KRS 342.316 is unconstitutional in the burden it establishes for those who make a claim for coal workers' pneumoconiosis finding that there was no substantial or justifiable reason for different or unequal treatment of coal workers' pneumoconiosis claims and other occupational lung diseases or illnesses. It was from this opinion by the Court of Appeals that this appeal was taken.

FACTUAL BACKGROUND

Martinez filed an Application for Pneumoconiosis claim ("Application") arising out of his employment with the Appellant, Peabody Coal Company ("Peabody"). With the Application, Martinez tendered a chest x-ray as well as a report from Dr. Glen Baker finding category I / 0 pneumoconiosis.

This appellant had Martinez examined by Dr. Robert Neal Pope on December 23, 2002. Dr. Pope in his report found no evidence of pneumoconiosis. He diagnosed a mild cardiomegaly and a tortuous descending thoracic aorta.

Since the two reports were not in agreement, the Commissioner filed a notice that there was no consensus with the initial two B-reader reports and pursuant to KRS

342.316, the two x-rays were forwarded to a panel of three B-readers independently chosen by the Department of Workers' Claims. Dr. Ramakrisnan and Dr. Rosenberg found category 0/1 pneumoconiosis which is a negative diagnosis of the disease. Dr. Dineen found category 0/0 pneumoconiosis which meant that all three doctors found that Martinez did not have coal workers' pneumoconiosis. The Commissioner gave notice that the B-reader reports indicated a consensus reading.

It should also be noted that in the Application for Resolution of Coal Workers' Pneumoconiosis claim, in question number 19 Martinez was asked when he filed the claim if he was alleging a pulmonary impairment as a result of coal dust exposure, and Martinez answered "no." If the answer was "yes" he was to attach pulmonary function studies and tracings. (See KRS 342.316(3)(a)1) In the Administrative Regulations at 803 KAR 25:009 § 2(5), it states that upon the Executive Director's notification of completion of the consensus process, the Plaintiff shall have 30 days in which: (a) to amend the claim to allege pulmonary impairment and (b) to submit a medical report supporting that allegation and pulmonary function tests. During the many years that the CWP claim of Martinez has been pending, Martinez never amended his claim to allege pulmonary impairment. This is important because outside of CWP claims, all traumatic injury and occupational disease claims other than CWP base awards of income benefits on impairment as found in the Guide to the Evaluation of Permanent Impairment of the American Medical Association, latest edition available. Thus, if a claimant filed for workers' compensation benefits due to an injury or an occupational lung disease other than coal workers pneumoconiosis, that worker would have to prove impairment before

the worker would be eligible for any income benefits. See KRS 342.0011(35) and (36) and KRS 342.732(1)

Following the notice that the B-reader reports indicated a consensus reading, this Appellant filed a timely Notice of Claim Denial. The Administrative Law Judge, in deciding the case, found that the provisions of KRS 342.316(13) had not been overcome which is to say that the consensus classification was presumed to be correct and "clear and convincing evidence" had not been presented by Martinez to overcome that presumption. The Board affirmed the decision of the ALJ and, the Court of Appeals then held the case in abeyance as indicated earlier. It was remanded back to the Board and ALJ by the Court of Appeals when the Bartrum, supra, claim was decided.

On remand, Martinez asked for the x-rays, but presented no further medical evidence regarding the claim. Moreover, he did not amend the Application to include a claim that he had pulmonary impairment. Martinez did argue that the burden placed upon him under KRS 342.316 was a violation of his right to equal protection.

The Court of Appeals has reversed the Workers' Compensation Board decision and remanded the claim for further proceedings consistent with their Opinion. In their Opinion, the Court of Appeals had indicated that this Court has previously examined the issue of whether the two step consensus process of KRS 342.316 and the presumption that the consensus x-ray is correct absence clear and convincing evidence to the contrary and whether that two step process and the presumptions at KRS 342.316 violate equal protection rights guaranteed by the U.S. as well as Kentucky constitutions. The decision by the Court of Appeals seemed to rely on this Court's opinion in Cain v. Lodestar Energy, Inc., 302 S.W.3d 39 (Ky. 2009). However, in the Cain case, the x-ray and x-ray

interpretation filed by the coal miner indicated category 2 pneumoconiosis. The employer had an x-ray made and their doctor interpreted category 1 pneumoconiosis. Because the two interpretations were not consensus, the two films were sent to a panel of B-readers randomly selected by the Department of Workers' Claims and that panel found category 0 pneumoconiosis. The ALJ dismissed the claim finding that the opinion of the B-reader panel had not been overcome by the Plaintiff with clear and convincing evidence, despite the fact the Plaintiff had actually asked for the x-rays and submitted another positive diagnosis of the disease. In what we submit to be a very narrow opinion, confined to that fact situation, this Court noted that had there not been the requirement for the use of the B-reader panel, the employer's own x-ray interpretation would have entitled the worker to RIB benefits. With that in mind, this Court reversed and remanded ordering Cain to receive the RIB benefits which would be due him under a finding of category 1 pneumoconiosis.

It was from the decision of the Court of Appeals rendered June 4, 2010 that this appeal was taken. This appellant then filed a Notice to Appeal which was received on June 30, 2010. Following the notice of filing of the Notice to Appeal by this appellant, the Court of Appeals did issue, on their own motion, an order correcting the opinion of certain clerical errors which affected neither the outcome nor the basis of the opinion but only corrected certain clerical errors on pages 7 and 9 and an error wherein this writer was not mentioned as the counsel for appellee. Since that time a notice of intention not to intervene was filed by the Attorney General's office.

ARGUMENT

THE COURT OF APPEALS ERRED IN HOLDING KRS 342.316 VIOLATES EQUAL PROTECTION AND FINDING THAT THERE WAS NO SUBSTANTIAL OR JUSTIFIABLE REASON TO TREAT WORKERS WHO CONTRACT CWP DIFFERENTLY THAN THOSE WORKERS THAT CONTRACT OTHER OCCUPATIONAL LUNG DISEASES.

Any analysis should begin with the presumption that legislative acts are constitutional. See United Dry Forces v. Lewis, 619 S.W.2d 489 (Ky.1981); Sims v. Board of Education of Jefferson County, 290 S.W.2d 491 (Ky. 1956); Brooks v Island Creek Coal Co., 678 S.W. 2d 791 (Ky. App. 1984).

I.

WE FIRST STATE THAT THE COURT OF APPEALS MISINTERPRETED THIS COURT'S OPINION IN CAIN V LODESTAR ENERGY, INC. KY. 302 S.W.3D 39 (2009).

The Cain, supra, decision seemed to be confined to the unique factual situation in that particular case. Again, the facts were that the x-ray interpretation filed by the Plaintiff demonstrated category 2 pneumoconiosis while the x-ray filed by the employer demonstrated category 1 pneumoconiosis. Quite clearly there was not a consensus and it would appear that the purpose of a B-reader panel was to have a neutral group of B-readers randomly chosen by the Department of Workers' Claims to review the two films to determine which of the two interpretations was correct. In the Cain case, the three B-readers on the panel found category 0. Moreover, Cain took advantage of the regulation enacted after the Bartrum, supra, case, and filed an x-ray from another doctor who found category 1/0 pneumoconiosis. The ALJ found that under KRS 342.316(13) that the consensus procedure was presumed to be correct which was the finding of category 0 pneumoconiosis and was not overcome by clear and convincing evidence presented by

the coal miner. This Court reversed and remanded for an award based on category 1 pneumoconiosis in what we submit was a very narrow construction of the statute. This Court seemed to be greatly impressed by the fact the employer's evidence "effectively concedes the workers entitlement to RIB." (See Cain at 302 S.W.3d at page 43) Thus, if another worker with an occupational lung disease had filed x-ray interpretations such as those in Cain, and they did not go to a B-reader panel, it would appear that the other worker would be entitled to at least the RIB benefits and possibly the benefits he might have with a higher rating depending on what the ALJ found. However, in the Cain case, this Court found that the interpretation by the ALJ of that second step in this case did deny Cain equal protection. Indeed, this Court did not remand the case to the ALJ to determine whether Cain had category 2 or category 1 pneumoconiosis, but actually remanded for an award based on category 1 pneumoconiosis. Since the facts situation in this case were not at all like the facts in Cain, supra, in that the employer's x-ray demonstrated category 0 pneumoconiosis, the Cain case should not apply and the Court of Appeals, we respectfully submit, misconstrued this Courts holding in Cain and, in essence, declared all of the Black Lung law in Kentucky unconstitutional. On that basis, the decision of the Court of Appeals should be reversed.

II.

NEITHER THE PROVISIONS OF KRS 342.316(13), REQUIRING THAT THE CONSENSUS CLASSIFICATION SHOULD BE PERCEIVED TO BE THE CORRECT CLASSIFICATION UNLESS OVERCOME BY CLEAR AND CONVINCING EVIDENCE, NOR THE REQUIREMENT THAT THE TWO X-RAYS BE SENT TO A PANEL OF THREE "B" READERS, VIOLATES "EQUAL PROTECTION" EVEN BETWEEN WORKERS WITH CWP AND WORKERS WITH OTHER OCCUPATIONAL LUNG DISEASES.

In the present case before the Court we point out that the statute would not violate equal protection if it has a reasonable basis or "rational justification" for treating coal workers differently. *See* U.S. v. Kras, 409 U.S. 434, 426, 93 S.Ct. 631, 34 L.Ed.2d 626 (1973). If the state objective is legitimate and the classification is rationally related to that objective, a statute is not constitutionally arbitrary. *See* Richardson v. Belcher, 404 U.S. 78, 84, 92 S.Ct. 254, 30 L.Ed.2d 231 (1971). The Court in the case of Jefferson v. Hackney, 406 U.S. 535, 546, 92 S.Ct. 1724, 1731, 32 L.Ed.2d 285 (1972) held that in the "area of economics and social welfare, a State does not violate the equal protection clause merely because the classifications made by its laws are imperfect". A legislature may address a problem "one step at a time or even select one phase of a field and apply a remedy there, neglecting the others". See also Chapman v. Eastern Coal Corp., 519 S.W.2d 390 (Ky. 1975).

This Appellant is aware that other similar cases are before this Court and will be before this Court on more narrow challenges to the equal protection at KRS 342.316 especially the presumptive weight of the B-reader panel and the ability of any claimant to overcome that census reading with clear and convincing evidence [(KRS 342.316(13)] as well as the requirement that the x-rays be submitted to the B-reader panel in the first

place. Various intermediate Courts have questioned what substantial or justifiable reason the legislature would have for requiring this in coal workers pneumoconiosis cases and that will be addressed. While CWP cases are treated differently than other occupational lung disease claims there is a "substantial or justifiable reason" for the difference in treatment of these compensable claims.

First, Joe Martinez never amended his Application for Resolution of Coal Workers' Pneumoconiosis claim to include a claim for pulmonary impairment. In our brief before the Court of Appeals as well as earlier, we demonstrated that Martinez lacks standing to even challenge the Constitutionality of the Statute on "equal protection" given the fact that he did not allege pulmonary impairment nor did he present any medical evidence of pulmonary impairment. Workers who do not have CWP, but allege an occupational lung disease or a traumatic injury must prove impairment as found in the Guides to the Evaluation of Permanent Impairment of the American Medical Association, latest available edition. See KRS 342.0011 (35) and (36). These AMA Guides at page 106 of the 5th Edition under section 5.8 state that a person who develops pneumoconiosis should limit further exposure. However, in section 5.10 under permanent impairment due to respiratory disorders, there must be a pulmonary impairment rating. See table 5-12 at page 107 of the Guides to the Evaluation of Permanent Impairment of the AMA Guides, 5th Edition which is attached. Since Martinez never amended his claim or presented any medical evidence of a pulmonary impairment, Martinez would have had no claim for income benefits had he been a worker with another occupational lung disease or a worker with a traumatic injury. Had he been able to prove that he had radiographic evidence of CWP at the level of category 1, he would have been entitled to the retraining incentive

benefits (RIB) which would not be available to workers with other occupational lung diseases or any worker with a traumatic injury.

We submit that the question of why the Kentucky legislature might treat workers with CWP different than workers from other industries who may have contracted pneumoconiosis is seen and explained in this Court's decision of Kentucky Harlan Coal Company v Holmes, Ky., 872 S.W.2d 446 (Ky. 1994). The claims involved in that case challenged the constitutionality on equal protection and due process having to do with the 1987 changes in the Black Lung law and in particular the employers were challenging the law because of various "irrebuttable presumptions." These irrebuttable presumptions required findings of permanent total disability whether a person could work or not. In this Holmes (supra) decision decided in 1994, this Court reviewed the legislative history of the 1987 extraordinary session of the Kentucky Legislature. The Court noted the rising cost of workers' compensation and the increasing liability of the Special Fund and that that rising cost could deter industrial development and encourage existing industries to depart the state (872 S.W.2d at 449). Also cited and mentioned was the book by Edward H. Daniel, Jr., 1987 Kentucky Workers Compensation Law. In 1996 at KRS 342.1241, the legislature made specific legislative findings and declarations made relative to the Kentucky Coal Workers' Pneumoconiosis Fund, which we submit also demonstrate continuing concern about the cost of funding Black Lung benefits for coal miners. Specifically, it was found awards for worker's compensation benefits for CWP placed a "substantial financial burden on all employers of the commonwealth through the special fund assessments imposed on all employers to cover the liabilities of the special fund." Specifically at KRS 342.1241(3) there was a statement that the intent of the General

Assembly was to assure the liabilities incurred as a result of workers' compensation awards for CWP with dates of exposure after December 12, 1996 shall be the financial responsibility of the employers engaged in the severance or processing of coal. Thus, from 1987 through 1996 and we submit on into 2000, the legislature has been concerned about the economic impact on Kentucky industries and the Kentucky coal industry of CWP claims specifically as opposed to occupational lung diseases in general. We submit that these economic findings of the Kentucky Legislature constitute a "substantial and justifiable" reason for different treatment of CWP cases as opposed to other occupational lung disease. We submit that the state of Kentucky clearly would have an economic interest in trying to rehabilitate coal miners with category 1 or category 2 pneumoconiosis and no pulmonary impairment. Indeed, the Guides to the Evaluation of Permanent Impairment of the AMA 5th Edition at page 106 state that;

> "persons who develop pneumoconiosis should limit further exposure to the offending agent, particularly if radiographic changes have occurred at a relatively young age or there is associated physiologic impairment, however, these individuals may be incapable of working at other jobs where the offending dust is not present. See Table 5-12 for criteria of assessment of impairment due to pneumoconiosis."

In that sense, the benefits provided for in KRS 342.732 as they pertain to benefits for workers with CWP strongly consider that statement in the 5th Edition of the AMA Guidelines although the Guides themselves do not provide for impairment on the basis of radiographic evidence. For there to be pulmonary impairment under the 5th Edition there must be a reduction in pulmonary function and a coal miner could have category 1 or category 2 pneumoconiosis with no pulmonary impairment. Under the 5th Edition there could be no impairment so that if the worker had category 1 or category 2 silicosis

instead of CWP, he would not be entitled to any income benefits, if he had no impairment. In CWP claims the Kentucky legislature has developed a system where miners with CWP are eligible for income benefits even if they do not have pulmonary impairment. In such cases, we rhetorically ask why it would be unconstitutional to require those miners to go through an extra process of having x-rays submitted to a neutral three member panel of B-readers chosen by the Department of Workers' claims. If benefits can be awarded to a miner with mere radiographic evidence of the disease and no pulmonary impairment, why shouldn't only the most highly qualified people in the interpretation of x-rays be used to allow those miners to receive the benefits? We ask rhetorically why in such cases the opinion of the neutral three number panel of B-readers should not have their consensus opinion given presumptive weight with the obvious factual exception found in the Cain, supra, decision?

We submit that KRS 342.316 and KRS 342.732 do not violate equal protection because there are trade-offs. Some workers with CWP are allowed to collect benefits if they can prove mere radiographic evidence of the disease with no pulmonary impairment. We submit there is a compelling state interest in re-training coal miners with category 1 or category 2 pneumoconiosis and no pulmonary impairment so that they might be able to leave the mining industry before they contract a higher and perhaps disabling stage of the disease either radiographically or through a pulmonary impairment. If there is a fault, it is the AMA Guides which assess impairment solely on the basis of pulmonary impairment. Those same Guides, however, provide, as we indicated earlier that people with radiographic evidence of the disease should leave the mining industry and re-train themselves for other jobs. The legislative findings and legislative history from 1987

through 1996 and on into 2000, we submit, demonstrate there is a very damaging economic effect on the Kentucky industry (both to the coal mining industry as well as industry at large) cause by benefits paid to coal miners for CWP. Over the years the legislature has made it more difficult to obtain awards for CWP as well as for other occupational lung diseases (see in particular the changes enacted in 1996). At the same time, the coal miners with CWP enjoyed "irrebuttable presumptions" which workers with occupational lung diseases would not have. These irrebuttable presumptions were upheld in the case of Kentucky Harlan Coal Company v Holmes (supra).

Thus, Kentucky has a strong economic interest in encouraging coal workers with radiographic evidence of CWP with no pulmonary impairment as well as workers with CWP with some pulmonary impairment to get out of the industry before they develop impairment or more impairment. We submit that encouragement of workers to get out of the coal mining industry with radiographic evidence of the disease is also consistent with the advice of the AMA Guides even if the Guides to the Evaluation of Permanent Injury do not specifically assess impairment without evidence of actual pulmonary impairment. What the Kentucky legislature has done, we submit, is to put together a package of benefits for workers with CWP as well as a package for workers with other occupational lung disease and injuries. These benefits obviously attempt to balance the needs of injured or ill workers with the ability of the Kentucky industry to pay those benefits. Clearly, this is a legislative function. Specific findings have been made by the Kentucky legislature addressed specifically to CWP wherein it was found that such benefits paid to coal miners with CWP were damaging the Kentucky economy both for the coal mining industry and industry in general when benefits were paid in part through the old special

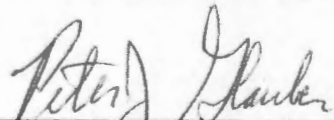
fund which existed at KRS 342.120. Kentucky has a long history of coal workers' pneumoconiosis claims being challenged under equal protection and a strong history of the legislation being upheld. Besides the case of Kentucky Harlan Coal Company v. Holmes, 872 S.W.2d 446 (Ky. 1994), there were "equal protection" challenges made and the statute upheld in the case of Chapman v Eastern Coal Company, 519 S.W.2d 390 (Ky. 1975).

We also ask the Court to consider the three member B-reader panel is to be randomly chosen according to the statute (KRS 342.316(3)(b)(4)(e). One of the purposes of the section, we submit, was to have a neutral three member body reading these x-rays which should encourage more objectivity in the evidence before the ALJ. The bills for interpreting these x-rays are not paid by the employer nor the Plaintiff. If there is a consensus by a panel of B-readers who should be the most highly qualified people to interpret x-rays for the presence or absence of CWP, it makes sense why that consensus opinion of the panel should be given presumptive weight although certainly exceptions will occur such as in the Cain case which has been already dealt with by this court. We also point out that if there was no consensus by the three member B-reader panel, the ALJ is free to make a decision based on the evidence (KRS 342.316(3)(b)(4)(e)). We submit that this does not offend equal protection. The "presumptive weight" of KRS 342.316(13) requires an ALJ to make specific findings when he finds that the consensus classification to be incorrect. Thus, if the ALJ in writing his opinion disagrees with the panel, he must say why and that does not put a too great a burden on the coal miner we submit.

CONCLUSION

The opinion of the Court of Appeals should be reversed and it should be specifically found that the requirement that the x-rays be submitted to a B-reader panel and that the opinion of the panel be given presumptive weight does not offend equal protection particularly in view of the fact that workers with other occupational lung diseases must prove pulmonary impairment in order to qualify for any income benefits. Thus, the dismissals of the claim by the ALJ and the Workers' Compensation Board should be reinstated and the opinion of the Court of Appeals must be reversed.

BOEHL STOPHER, & GRAVES, LLP



Hon. Peter J. Glauber,
BOEHL, STOPHER & GRAVES, LLP
2300 Aegon Center
400 West Market Street
Louisville, KY 40202
(502) 598-5980
COUNSEL FOR APPELLANT

APPENDIX

Court of Appeals Opinion Reversing and Remanding Decision of the Workers' Compensation Board
(rendered 7/16/10)

Decision of the Worker's Compensation Board Affirming Decision of the ALJ
(entered on 5/1/09)

Petitioner's Supplemental Brief

Respondent's Supplemental Brief

Order Removing Matter from Abeyance
Entered on 03/12/2009

Opinion & Order Holding in Abeyance
(entered on 10/05/2007)

Respondent's Board brief

Petitioner's Board brief

ALJ's Opinion and Order on Remand
(rendered 06/22/2007)

Guides to the Evaluation of Permanent Impairment of the AMA Guides, 5th Edition, page 106, Section 5.8 **(Exhibit "A")**

Guides to the Evaluation of Permanent Impairment of the AMA Guides, 5th Edition, page 107, Table 5-12 **(Exhibit "B")**