

# STATE OF TENNESSEE

## *Advisory Council on Workers' Compensation*

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### 2014 SUMMARY OF SIGNIFICANT TENNESSEE SUPREME COURT WORKERS' COMPENSATION DECISIONS

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TREASURY DEPARTMENT  
STATE CAPITOL  
NASHVILLE, TENNESSEE 37243-0225

**David H. Lillard, Jr., State Treasurer, Chair**  
**Lynn Schroeder, Administrator**

## **Significant 2014 Tennessee Supreme Court Workers' Compensation Decisions**

### **INTRODUCTION**

Pursuant to Tennessee Code Annotated (“T.C.A.”) § 50-6-121(i), the Advisory Council on Workers' Compensation is required to issue this report reviewing significant Tennessee Supreme Court decisions involving workers' compensation matters for each calendar year. This report includes a highly condensed version of the cases including some of the actual language to facilitate review of those significant 2014 decisions from the Tennessee Supreme Court.

### **The Tennessee Supreme Court**

Appeals of trial court decisions in cases involving workers' compensation are referred directly to the Supreme Court's Special Workers' Compensation Appeals Panel (“Panel”) for hearings. The Panel gives considerable deference to a trial court’s decision with respect to credibility of witnesses since the lower court has the opportunity to observe them testify. The Panel reports its findings of fact and conclusions of law, and such judgments automatically become the judgment of the full Tennessee Supreme Court thirty (30) days thereafter, barring the grant of a motion for review. Tennessee Supreme Court Rule 51 and T.C.A. § 50-6-225(e).

The full Tennessee Supreme Court (“Court”) granted one workers’ compensation employee’s motion for review of a Panel decision in 2014 and considered the case to determine if there had been a meaningful return to work so as to apply the one and one-half times statutory cap to his award. T.C.A. §50-6-241(d)(1)(A). The Court examined the basis and reasonableness of the employee’s decision to accept a group “buy-out” after his workplace injury caused him to be unable to work up to the quota and time standards of the company. The Court found his decision to be reasonable and injury-related. Therefore, the award was not capped since there was not a meaningful return to work. In so deciding, the Court overturned the Panel decision and reinstated the trial court’s award. A brief synopsis and link to the full case follows:

#### **CHA YANG v. NISSAN NORTH AMERICA, INC. ET AL.**

**Appeal by Permission from the Special Workers’ Compensation Appeals Panel  
No. M2012-01196-SC-WCM-WC - Filed August 11, 2014**

The employee suffered bilateral shoulder injuries, underwent separate surgeries and later accepted a voluntary buyout of his employment as part of an offer made to all of employer’s manufacturing technicians. He filed suit for workers’ compensation benefits, and the trial court awarded him temporary total and uncapped permanent partial benefits. Employer argued the

permanent award should have been capped. The Panel affirmed the judgment of the trial court in all respects, except regarding the application of the cap, which it determined should have been applied. The Court granted employee's motion for review. The Court deferred to the trial court finding that the injured employee and his fellow employees' testimony was credible, that the injured employee wanted to work, and that his workplace injuries prevented him from being able to work without fear of reprimand or threats of loss of employment due to his inability to perform strenuous physical work at a rapid pace.

The Supreme Court analyzed whether the employee had a meaningful return to work by looking at both the reasonableness of the employer in attempting to return the employee to work and the reasonableness of the employee in failing to remain at work. The Panel acknowledged that if an employee resigns for reasons that are not related to his workplace injury, the employee has had a meaningful return to work and is subject to the cap under T.C.A. §50-6-241(d)(1)(A). Under the facts of this case, however, the Court deemed the employee's decision to accept the voluntary buyout to be reasonable in light of his substantiated belief that he would be unable to perform the job as required. Additionally the Court found this decision to be directly related to his workplace injuries and therefore not capped, so the Court reinstated the trial court's original award. The Panel's judgment was otherwise confirmed, including the rejection of the employer's claims of non-compensability of the mental injury and the award of temporary total benefits, medical expense and discretionary costs. The full text of the opinion may be viewed here: [http://www.tncourts.gov/sites/default/files/yangcha.opn\\_.pdf](http://www.tncourts.gov/sites/default/files/yangcha.opn_.pdf)

## **The Tennessee Supreme Court Special Workers' Compensation Appeals Panel**

A notable percentage of the cases considered by the Panel this year revolved around what is considered "reasonable" regarding an injured individual's decision not to return to the workplace and whether such action is deemed to take away an employee's meaningful return to work which would lift the cap on their permanency awards. Reasonableness depends on the facts of each case. The reasonableness of the employer in attempting to return an employee to work is reviewed. Likewise, the reasonableness of the employee who fails to return to work after an injury, or returns to work but later resigns or retires because of the injury is reviewed. Neither the Panel nor the Court made any changes to previous law with respect to this subject matter; rather, this year, the Court reaffirmed its prior reasoning.

An additional fair percentage of this year's cases dealt with the subject of conflicting physician opinions regarding causation, pre-existing injuries and gradual injuries. The Panel makes its own conclusions with regard to expert medical depositions testimony, and there is no presumption of

correctness on the part of the trial court's choice of which physician to credit when there is a conflict of opinions. The Panel reaffirmed that, except in the most obvious cases, causation and impairment must be established by expert medical evidence, although absolute medical certainty is not required as it is rarely attainable, and lay testimony may also be taken into consideration. Additionally, the admissibility of evidence by trial courts in this regard is not overturned by the Panel absent an abuse of discretion. This is consistent with the Court's previous line of reasoning and case law.

The following is an alphabetical list with brief outlines of the subject matter of pertinent cases heard by the Panel (and not taken up for review by the full Supreme Court) in 2014 until and including December 15<sup>th</sup>, 2014. Those filed after December 15<sup>th</sup> will be described in next year's report.

**ARAMARK ET AL. v. JEREMY NIX No. M2012-02608-WC-R3-WC - Filed January 14, 2014.** The compensability of an employee's back injury was in dispute. Medical records showed a disc rupture with pressure on the L5 nerve. The employer asserted that if there was to be an award, it should be capped since the employee was terminated for misconduct including absenteeism, tardiness, an alleged altercation with his fellow employee, and his failure to report his injury-causing incident within the time required by the employer's internal rules, which was considered a workplace safety violation. No business records documenting the allegations of misconduct were authenticated or introduced into evidence. The physician testified that the evidence supported a finding the incident occurred and could have caused the injury or aggravated a pre-existing condition. The trial court found compensability and failure of a meaningful return to work awarding an uncapped permanent partial disability amount. The trial court judgment was affirmed. The full text of the opinion may be viewed here: <http://www.tncourts.gov/courts/workers-compensation-panel/arguments/2013/09/23/aramark-indemnity-insurance-co-north-america>

**ASSOCIATED WHOLESALE GROCERS v. LAWRENCE F. LING No. M2013-01317-WC-R3-WC - Filed April 1, 2014.** The employee alleged that he sustained a compensable aggravation of his pre-existing spinal condition. He had worked as a fork-lift operator for over thirty years. He had a twenty year history of back problems. He underwent surgery in the 90's, steroid injections in the 2000's, and was able to return to his previous job without restrictions as late as February 2008, but he could not return to work after May 2011 because the company's new standing forklifts required more physically demanding work than he was able to perform comfortably. Several physicians had differing opinions as to whether the present condition was work related or degenerative, and the trial court ruled that the employee failed to satisfy his burden of proof that the condition was work related and dismissed the complaint. The Panel affirmed the judgment of the trial court. The full text of the opinion may

be viewed here:

[http://www.tncourts.gov/sites/default/files/associated\\_wholesale\\_groceropnjo.pdf](http://www.tncourts.gov/sites/default/files/associated_wholesale_groceropnjo.pdf)

**KRISTEN BALL v. REGIONS FINANCIAL CORPORATION, ET AL.**

**No. W2013-02454-SC-R3-WC - Filed October 2, 2014.** A sixty-one year old, sixteen year employee fell at her place of employment and reported pain in her right shoulder and hip. She was treated and released by her authorized physician. Five months after the fall, she developed left knee pain. Ten months after the fall, she developed pain her left hip and lower back. The employee's knee and back conditions ultimately required surgery, but her employer denied that the fall at work caused her conditions. The trial court awarded benefits for the knee and back injuries. The Panel reviewed the record and found the authorized treating physician's ("ATP's") opinion more persuasive than that of the independent evaluating physician for several reasons. The authorized treating physician did not feel the back injury was related to the fall ten months prior. There was some question of an intervening fall at home. The independent evaluating physician first saw her sixteen months after the fall and, although he believed the back condition to be related to the work fall, he did not have a complete medical history, which included a prior back injury, due to the employee's significant memory issues. Consequently, the Panel concluded that the evidence preponderated against the trial court's finding and reversed the award of permanent disability benefits and medical expenses for employee's back injuries and remanded with instruction that the permanent impairment figures be properly reduced. The Panel affirmed the remainder of the judgment including the compensability of the left knee injury and the award of temporary total disability and medical benefits. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/ballopn.pdf>

**BOBBY R. BEAN v. JOHNSON CONTROLS, INC. ET AL. No. M2013-01010-WC-R3-WC - Filed April 30, 2014.** An employee suffered back problems while working at a previous job in 2003 and underwent a successful laminectomy and returned to work without restrictions. In 2009, he sustained an injury eventually revealed to be a herniated disc L3-4, which required a laminectomy and a discectomy. Less than one month after the injury, the employee notified the employer of his workers' compensation claim against it and the Second Injury Fund stemming from a repetitive gradual onset injury. In March 2010, the treating physician informed both employee and employer's counsel that he believed employee's 2009 herniated disc was a work-related injury. In April 2010, the physician retracted his opinion and informed counsel for the employer that the injury was caused by the natural aging process, while admitting that it could have been a cumulative trauma, although possibly not the sole cause. The trial court found that the employee suffered a gradual onset injury to his back as a result of repetitive overuse arising out of and in the course of his employment and awarded both temporary total and permanent partial benefits. All claims against the Second Injury Fund were dismissed. In this case, the evidence pointed to the conclusion that the employee's November 2009 spinal condition was a new or advanced injury since the herniated disc at the L3-4 level

was not a condition that was previously present. All of the physicians agreed that repetitive bending and twisting could cause a herniated disc. The judgment of the trial court was adopted and affirmed. The full text of the opinion may be viewed here: <http://www.tncourts.gov/courts/workers-compensation-panel/arguments/2014/02/24/bobby-r-bean-v-johnson-controls-inc-et-al>

**JEFFREY L. BEELER v. DeROYAL INDUSTRIES, INC. ET AL. No. E2012-02340-WC-R3-WC- Filed - January 14, 2014.** The opinion discusses the difficulty of determining if an injury is a gradual aggravation or natural progression of a previous injury. The employee was a forklift driver in 1990 for a previous employer when he suffered a crush injury requiring surgery for internal laceration, fractures of two vertebrae and a herniated disc at the right side of L5-S1. He was off work for six weeks and settled his workers' compensation claim for a permanent partial disability, which was approved by the trial court in August 1993. He began work as a forklift driver for this employer in January of 2008, and, one morning in November of 2008, was unable to get out of bed due to pain. His doctor opined that the heavy lifting and awkward positions required by employee's work for employer permanently aggravated and advanced employee's preexisting degenerative disc disease at both the L4-5 and L5-S1 levels. The doctor further opined that the degenerative disc disease would not have advanced as quickly if employee had been doing lighter work. The employer's physician did not agree and opined that although the work activity aggravated the pre-existing condition by increasing the pain, it was not a new or aggravated condition but only a degenerative condition. The Panel affirmed the trial court's judgment that the employee had not suffered a compensable injury. The full text of the opinion may be viewed here: [http://www.tncourts.gov/sites/default/files/beeler\\_v\\_deroyal\\_industriesopn.pdf](http://www.tncourts.gov/sites/default/files/beeler_v_deroyal_industriesopn.pdf)

**SHEILA CAMERON v. MEMORIAL HEALTH CARE SYSTEM, INC. ET AL. No. E2013-01225-WC-R3-WC- Filed-June 10, 2014.** Employee, a registered nurse, sustained an injury to her cervical spine when a psychotic patient grabbed her, pulled her by the jacket and held her head to a bed rail until security officers enabled her release. It was medically determined that both her pre-existing condition and her work injury resulted in a combination of disc osteophyte complexes that caused marked spinal stenosis C3-7 and disc herniations at multiple levels with radiculopathy. She had no physical limitations prior to the injury. Upon reaching maximum medical improvement, the employer made a written offer to return her to work. The employee did not return to work because she was unable to drive safely or make good judgments due to the narcotics she had been prescribed to treat the symptoms of the injury. The Panel affirmed the judgment of the trial court, which found that employee did not have a meaningful return to work, that any permanent and total disability award was not subject to the cap and that she was permanently and totally disabled since she was incapacitated from working at any occupation that generated an income. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/cameronsonpn.pdf>

**BESSIE CAWTHON v. BAPTIST MEMORIAL HOSPITAL-UNION CITY ET AL.** No. W2012-02138-SC-WCM-WC - Filed January 15, 2014. A licensed practical nurse suffered a work-related rotator cuff tear to her shoulder, had two repair surgeries and returned to work in a modified-duty position for several months when she elected to have knee replacement surgery to remedy pre-existing arthritis that was unrelated to her work. Complications with the knee surgery caused the employee to exhaust her leave, and the employer terminated her. The employee sought permanent and total disability benefits. The trial court initially found that the employee had a meaningful return to work and capped her award but later granted the employee's motion to amend (inappropriately labeled a reconsideration) and found that she did not have a meaningful return to work and that she was permanently and totally disabled, apportioning the award between the employer and the Second Injury Fund. The Panel reversed the judgment of the trial court and found that employee had a meaningful return to work after her shoulder surgeries which precludes an award of benefits in excess of the cap. The employee chose to have non-work related knee surgery, complications of which exhausted her available leave and resulted resulting in her termination, which had nothing to do with the work injury. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/cawthonopn.pdf>

**DANA AUTOMOTIVE SYSTEMS GROUP, LLC ET AL. v. LARRY EVANS** No. W2013-01960-SC-R3-WC - Filed October 2, 2014. A twenty-eight year employee developed bilateral carpal tunnel syndrome while working as a welder and supervisor. It took months for his employer to respond to his reported injury, and, shortly thereafter, the employer, prior to the employee receiving medical treatment and unrelated to the injury, gave the employee a choice to retire or potentially lose his substantial pension due to the company being in a Chapter 11 bankruptcy. The employees were made to understand they would no longer have the option to recover their pensions as a lump sum after the end of that year, and they possibly would not have a pension at all. With both the injury and the threat of losing his pension, employee accepted a future retirement date. The trial court held that a Medical Impairment Rating Registry ("MIR") physician's rating with respect to the injuries was incorrect since it was so stipulated by both parties and that the statutory cap on permanent partial disability benefits did not apply. The Panel reversed the trial court's judgment with respect to the MIR physician's evaluation and stated that the stipulated error was insufficient proof to overcome the rating's presumption of accuracy and correctness. With respect to the application of the caps, however, the Panel affirmed the trial court's decision, stating that the employee has not had a meaningful return to work since his retirement was reasonably related to his workplace injuries. Additionally, the Panel affirmed the trial court's vocational disability decision. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/danaautoopn.pdf>

**DAVID DeGALLIFORD v. UNITED CABINET COMPANY, LLC ET AL. No. M2013-00943-WC-R3-WC - Filed March 17, 2014.** A thirty year employee filed a workers' compensation claim for a gradual injury to his cervical spine from repetitive tasks and heavy lifting. Employer denied the claim since "cumulative trauma conditions" do not include injuries resulting from repetitive work activities for the date of this injury "unless such conditions arose primarily out of and in the course and scope of employment." The employee's treating physician testified that the employee's repetitive tasks at work were the primary cause of his injury. The employer's hired independent physician, upon review of the records, testified that the employee's injury was caused by a degenerative disc disease common in the aging process which could be exacerbated by the work activities. The trial court weighed the conflicting expert medical opinions and ruled for the employee. The Panel affirmed the judgment of the trial court and reiterated that the employee's treating physician found the work activities to be the primary cause of the employee's injuries. The full text of the opinion may be viewed here: [http://www.tsc.state.tn.us/sites/default/files/degalliford\\_david.opn1jo1.pdf](http://www.tsc.state.tn.us/sites/default/files/degalliford_david.opn1jo1.pdf)

**MADIA DIA v. IMPORTS COLLISION CENTER, INC. No. M2013-01496-WC-R3-WC - Filed August 20, 2014.** An eleven year employee sustained a work injury, was treated and returned to work with a capped award. Employee later applied for reconsideration since he was no longer employed by employer. The employer opposed employee's request for reconsideration on the ground that employee had voluntarily resigned. Employee was instructed to remove an exhaust system from a car which was sitting outside in snow. He complained that it was too cold and unsafe due to the unlevel nature of the vehicle where it was parked and the possibility of it falling on him. He enlisted the help of fellow workers to push the car indoors to perform the work, but they were stopped mid-stream and he was told to report to the manager's office to sign a form stating that he had engaged in misconduct by his behavior. Not able to read the form, he asked a supervisor what it said and was told that it was full of misinformation and that he shouldn't sign. He explained that he would not sign, but management did make it clear that he had to sign in order to keep working. Accordingly, he found other employment. The trial court ruled that the employer failed to carry its burden of proof and granted employee's request for reconsideration and awarded increased benefits. The Panel reversed the trial court's judgment stating that the employee held the keys of his employment in his pocket and so was not entitled to reconsideration. The full text of this opinion may be viewed here: [http://www.tncourts.gov/sites/default/files/diamadia.opnjo .pdf](http://www.tncourts.gov/sites/default/files/diamadia.opnjo.pdf)

**LARRY O. EVANS v. FIDELITY & GUARANTY INSURANCE COMPANY ET AL. No. M2013-00763-WC-R3-WC - Filed April 16, 2014.** A sixty-five year old, thirty-two year employee sustained a compensable injury involving his right thumb. The trial court ruled that the employee's partial disability award should be apportioned to the arm and capped. Employee asserted that the award should have been apportioned to his thumb as a scheduled member without the cap. The Panel found that the injury occurred at the point where the thumb

joins the wrist, right below the crease where it attached to the hand. The wrist is considered to be part of the arm for purposes of workers' compensation. Additionally, when there is a close connection between two scheduled members, the injury is usually attributed to the greater member, so the Panel affirmed the trial court's judgment in which it apportioned employee's injury to the arm rather than the thumb. The opinion is also listed under the full Supreme Court cases' site, but it was decided by the Panel and the opinion accepted by the full Court without granting a motion to review, like the rest of the cases in this section. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/evanslarryopnjo.pdf>

**JENNIFER GRAY v. ZANINI TENNESSEE, INC.** No. M2013-00762-WC-R3-WC - Filed April 1, 2014. The trial court dismissed the employee's workers' compensation action for shoulder injuries because the employee had failed to exhaust her administrative remedies by holding a benefit review conference ("BRC") prior to filing suit. Since the employee had more than one injury in a two year time period, there was some confusion as to which injury the BRC that *was* held addressed. It was ultimately determined that although she had applied for a BRC for the shoulder and not heard back from the Department of Labor and Workforce Development in six months' time, the BRC that was held was not for that injury, so she had failed to exhaust her administrative remedies, and the court dismissed the suit as premature. The Panel affirmed the judgment of the trial court in dismissing the action and agreed that there is clear legislative intent that the administrative process cannot be so circumvented. The full text of the opinion may be viewed here: [http://www.tncourts.gov/sites/default/files/grayjennifer.opnjo .pdf](http://www.tncourts.gov/sites/default/files/grayjennifer.opnjo.pdf)

**TRACY W. HAMILTON v. PEMBERTON TRUCK LINES, INC. ET AL.** No. E2013-01329-WC-R3-WC- Filed July 16, 2014. A tractor-trailer driver sustained a work-related injury to his cervical spine upon pulling a pin to balance a load. The treating physician believed the resulting herniated disc was the result of the injury. A second herniated disc with cord compression appeared in the next year which the doctor also believed to be directly related to the Employee's work injury and would require pain medication indefinitely. The employee's testimony along with several independent medical evaluations and vocational evaluations were entered into evidence, and the trial court found the employee to be permanently and totally disabled as a result of the injury. The Panel affirmed the trial court's judgment and found that a preponderance of the evidence supported complete vocational disability and, therefore, permanent and total disability, regardless of whether medical expert testimony was present in that regard. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/hamiltontracyopn.pdf>

**PATRICIA HAWKINS v. MAURY COUNTY BOARD OF EDUCATION ET AL.** No. M2013-01083-WC-R3-WC - Filed October 23, 2014. A school counselor filed a workers' compensation action alleging that she suffered a lower back injury in the course of her

employment when she pushed a desk away from a wall in her classroom. Her employer denied the claim due to late notice and conflicting statements resulting in a dispute as to the cause of her symptoms, including possibly being degenerative in nature. Inconsistent testimony and conflicting physician opinions required credibility determinations which resulted in the trial court's judgment that the employee failed to prove that the injury had occurred in the course and scope of her employment, thereby dismissing her case. The Panel affirmed the judgment of the trial court. The full text of the opinion may be viewed here: [http://www.tncourts.gov/sites/default/files/hawkinsp\\_opnjo.pdf](http://www.tncourts.gov/sites/default/files/hawkinsp_opnjo.pdf)

**ALVIN HAYES v. SHARP TRANSPORT CO. and CHEROKEE**

**INSURANCE CO. No. M2013-00932-WC-R3-WC - Filed February 20, 2014.** Employee suffered compensable injuries in 2006 to his lower back and right shoulder, returned to work, cut back on his hours in 2009 and retired in 2011, three years earlier than he intended, which he testified was due in part to safety concerns from the effects of the injury. The trial court found that the employee was credible and had become increasingly concerned about his pain and his ability to safely drive a freightliner. He was planning on driving until age sixty-five but eventually decided that with the continued pain in his back, the safest route was to retire at age sixty-two. The Court found that the employee's decision to retire was reasonably related to his work injury, and he had, therefore, not had a meaningful return to work, so the statutory cap did not apply. The employer asserted that the award should be capped because the employee had voluntarily resigned. The Panel agreed with the employer and reversed the trial court's judgment, indicating that there was a meaningful return to work since the employee worked for almost five years after the injury. The Panel further noted that the employee's physician had not restricted him from working nor requested he retire, in addition to the fact that he voluntarily resigned from his employment without any statement that it was associated with his workplace injury. The full text of the opinion may be viewed here: <http://tncourts.gov/sites/default/files/hayesalvinopnjo.pdf>

**GEORGE HOLLARS v. UNITED PARCEL SERVICE, INC., ET AL.**

**No. M2013-00144-WC-R3-WC - Filed March 7, 2014.** A thirty-five year package car driver experienced two episodes of heat exhaustion while delivering packages in his non-air conditioned work vehicle. He was treated by various physicians who produced conflicting opinions as to exactly what injury he had suffered and whether the condition was permanent. The employer could not accommodate the restrictions imposed by the employee's personal physician and would not allow him come back to work, so the employee retired. The trial court found a permanent partial disability and awarded him uncapped benefits. The employer asserted that the injury was not permanent in nature. The Panel took into consideration the fact that all medical exams after the incident came back normal, and the employee testified that he thought he could still perform the work. The Panel reviewed the opinion of the physician most knowledgeable about the condition, noting that it was undisputed in the medical literature that the condition was

not permanent and that the employee's medication and low tolerance to exercise had likely contributed to the condition. Consequently, the Panel reversed the decision of the trial court and dismissed the complaint. The full text of the opinion may be viewed here: [http://www.tncourts.gov/sites/default/files/hollarsgeorge\\_v\\_ups\\_opnjo.pdf](http://www.tncourts.gov/sites/default/files/hollarsgeorge_v_ups_opnjo.pdf)

**JOHNNIE HUDSON v. PRO LOGISTICS, CHEROKEE INSURANCE COMPANY, AND SUE ANN HEAD, ADMINISTRATOR OF THE SECOND INJURY FUND** No. M2013-00387-WC-R3-WC - Filed February 20, 2014. The trial court found the truck driver suffered compensable injuries to his neck and back stemming from a motor vehicle accident and awarded him an uncapped amount of permanent partial disability. The court accepted a rating from one physician for the back and a rating from a different physician for the neck. The Panel reversed the trial court's judgment only with respect to the impairment rating chosen for the cervical spine since the physician's apportionment should have been applied, or a reason for not applying the apportionment should have been provided by the trial court. The Panel affirmed the trial court's judgment in all other respects. The Panel pointed out that when there are conflicting medical opinions and a trial court selects a particular physician's rating as the most appropriate, it should include all portions of that rating. The full text of this opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/HUDSONJOHNNIE.OPN.PDF>

**KEVIN HUDSON v. KROGER LIMITED PARTNERSHIP I** No. W2013-02181-SC-WCM-WC - Filed November 24, 2014. An employee sustained injuries to his head, neck, and back when his tractor trailer was struck from behind by a tractor trailer owned by the same employer. The employee returned to work, but pain rendered him unable to perform his job, the employer declined to allow him to return to work with his restrictions, and suggested he resign, which he did. He was eventually diagnosed with a nerve-entrapment condition, which the employer denied was caused by the accident. The trial court found in the employee's favor and awarded temporary total and permanent disability benefits. The employer argued that the trial court erred in excluding the expert testimony of an accident reconstruction engineer on the issue of causation. The Panel agreed with the employer that the trial court erred by excluding portions of the expert's testimony but found that such error did not affect the outcome. Additionally, the Panel found that the employee's physician had already clearly determined causation and that the MIR physician's statutorily presumed correct rating could not be overcome by the testimony of a non-physician engineer, so the trial court's judgment was affirmed. The full text of this opinion may be viewed here: <http://www.tncourts.gov/courts/workers-compensation-panel/arguments/2014/06/02/kevin-hudson-v-kroger-limited-partnership>

**C. DOUGLAS JONES v. CVS PHARMACY, INC. No. E2013-02451-SC-R3-WC-Filed - November 20, 2014.** Employee's treating physician opined that his back injury was caused from a fall to the ground which occurred when a stool on which he was sitting collapsed. The employee had not informed the treating physician of a prior motor vehicle accident nor of his prior history of back pain. Two other evaluating doctors, who had knowledge of the prior motor vehicle accident information, opined that his symptoms were related to the prior accident. The trial court found that employee did not suffer a compensable injury. The Panel agreed that the treating physician's opinion was compromised since it was based on incomplete and inaccurate information and the trial court has discretion to choose which expert to credit; therefore, the employee had failed to sustain his burden with respect to causation. The trial court's judgment was affirmed. The full text of this opinion may be viewed here: [http://www.tncourts.gov/sites/default/files/jones\\_douglasopn.pdf](http://www.tncourts.gov/sites/default/files/jones_douglasopn.pdf)

**DANNIE JOYNER v. ERACHEM COMILOG, INC. ET AL. No. M2013-02646-SC-R3-WC - Filed September 22, 2014.** A thirty-three year employee alleged diseases of the skin, lungs and nervous system as a result of his exposure to nickel, cadmium, and manganese during his employment. The trial court found that the plaintiff had failed to prove by a preponderance of the evidence that his diseases were caused by exposure to these substances during his employment and entered judgment for the employer. There were numerous conflicting opinions of a multitude of physicians, some expressing the difficulty of determining the predominant contributing factor to the employee's illnesses, be it workplace exposure or another ailment coupled with a history of smoking. The Panel noted that while the experts agreed that the employee's symptoms were consistent with the disease called manganism, the total of the proof did not preponderate against the trial court's decision regarding compensability' therefore, the Panel affirmed the judgment of the trial court. The full text of this opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/joynerd.joopn .pdf>

**THOMAS L. KELLER V. THYSSENKRUPP ELEVATOR CORP. No. W2013-02529-SC-WCM-WC - Filed November 21, 2014.** A twenty-one year employee sustained an acute work-related injury to his back and leg and returned to work but eventually resigned due to continued related pain. The trial court found that the employee established a compensable injury, did not have a meaningful return to work, and awarded permanent partial disability benefits. The Panel gave considerable deference to the trial court's assessment of the conflicting medical opinions and confirmed the trial court's judgment that the employee wanted to work and tried to work but ultimately resigned from his job due to pain from the workplace injury. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/kellerthomasopn.pdf>

**RHONDA KYLE v. VOLUNTEER HOME CARE OF WEST TENNESSEE, INC. No. W2013-01892-WC-R3-WC - Filed August 7, 2014.** A six year certified nursing assistant sustained a work-related injury to her back while turning a patient. She received medical care and then returned to work but experienced daily pain in performing her job. She resigned two years later due to daily back pain. The trial court awarded an uncapped permanent partial disability benefit after it determined that the employee did not make a meaningful return to work following her injury, and that she had informed her employer of and that her resignation was due to persistent back pain from the work injury. The employer argued that the employee had voluntarily resigned. The Panel affirmed the judgment of the trial court, agreeing that the evidence supported its decision that the employee attempted for two years to fulfill the heavy lifting requirements of her job, that no evidence was provided to suggest the employer was capable of offering a modified-duty position and that the employee resigned due to pain related to the workplace injury. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/kyleropn.pdf>

**RUSSELL KYLE v. STATE FARM FIRE & CASUALTY COMPANY No. W2013-01505-WC-R3-WC - Filed October 2, 2014.** A nineteen year insurance adjuster fell from a ladder, sustaining multiple injuries. The employee agreed to take sick leave payments in lieu of temporary total disability payments. Two months after returning to work, the employee retired. Several impairment ratings were assigned, one from a physician chosen from the MIR Registry. The trial court awarded permanent benefits based on a higher impairment rating than the MIR physician's, awarded temporary total benefits from the injury date to the date of maximum medical improvement ("MMI") and credited the employer with the sick leave benefits paid. The Panel determined that the presumption of correctness of the MIR physician's rating was not overcome by the fact that he may have based his findings on inadmissible evidence. The Panel also determined that the MIR physician's opinions with respect to causation or proper MMI dates are not entitled to the same presumption of correctness as the impairment rating. The Panel also pointed out that temporary total disability ("TTD") benefits end when an employee returns to work, regardless of the MMI date. Lastly, the Panel determined that the agreement by the employee to take his sick leave rather than workers' compensation violated public policy by placing the cost of his injury on the wrong entity. The employer used vested employee benefits, which could have been cashed in at the time of retirement, to replace its obligation under its workers' compensation policy. Accordingly, the Panel determined that the trial court erred by awarding a set-off of the payments made under the employer's sick leave policy and awarded TTD's until the date of employee's return to work. The Panel vacated the trial court's impairment rating and found proper the MIR physician's rating. The Panel affirmed the remainder of the trial court's judgment. The full text of this opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/kyleopn.pdf>

**MARVIN WINDOWS OF TENNESSEE v. BOBBY L. WILLIAMS**

**No. W2013-02193-SC-R3-WC - Filed June 5, 2014.** A twenty year employee suffered a compensable work-related injury to his back. The trial court awarded the employee uncapped permanent partial disability benefits since the employee had retired due to the work injury. The employer disputed the extent of permanent partial impairment and the reasonableness of the employee's decision to take early retirement. The employee, on the other hand, claimed the court should have found him to be totally disabled. The Panel determined that the employee had returned to work in a modified-duty position following the injury until he suffered a new non-work related injury via an automobile accident. After that, he never held nor attempted any regular-duty job with the employer but instead applied for medical voluntary retirement. He failed to prove that he retired for reasons related to his workplace injury, so the statutory cap applies. Ultimately, the Panel affirmed the trial court's judgment with respect to the partial, rather than total, permanent disability, but reversed the trial court's judgment with respect to the cap. The full text of the opinion may be viewed here: [http://www.tncourts.gov/sites/default/files/marvinwindowsopn\\_0.pdf](http://www.tncourts.gov/sites/default/files/marvinwindowsopn_0.pdf)

**JUDY McCLENDON v. FOOD LION, LLC No. E2013-00380-WC-R3-WC- Filed-**

**July 11, 2014.** The employee settled her workers' compensation claim with her employer agreeing to provide future medical benefits. Her authorized treating physician, an orthopedic surgeon, retired ten years later, and the employee requested a new panel. The employer provided a panel of neurosurgeons rather than orthopedic surgeons. The newly chosen physician recommended a home exercise program, which the employee believed was not adequate treatment. She requested a new panel of physicians who were orthopedic rather than neurosurgical. Her employer opposed the petition, contending that it had provided treatment in accordance with the law and the terms of the settlement. The trial court ordered the employer to provide a panel of orthopedic surgeons to evaluate the employee's current need for treatment. Since the issues of causation and permanence had already been determined, the Panel disagreed with the employer's argument that the new panel physician's opinion could only be rebutted by expert medical testimony and found it proper to consider the employee's testimony about the effectiveness of the treatment and extent of the injury as well. Additionally, it found that there was nothing in the Workers' Compensation statute precluding a trial court from ordering a new panel of specialists it deems necessary to treat a particular injury. The Panel affirmed the judgment of the trial court. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/mclendonvfoodlion.pdf>

**JOHANN G. MERX v. DURO STANDARD PRODUCTS CO., INC.**

**No. W2013-00666-SC-WCM-WC - Filed May 15, 2014.** An employee sustained a work-related injury after a loading dock plate malfunctioned striking him in the knee. The employer sent him to two physicians of its choice and then denied the claim and offered no further medical treatment. The employee sought private treatment and underwent prescribed arthroscopic

surgery, after which he returned to work. The trial court dismissed the employee's complaint but also entered alternative findings if causation were proven. The Panel found the trial court's reliance on an accident reconstruction engineer to disprove causation misplaced, so the Panel credited the employee and several co-workers' testimony with respect to the injury and the machinery's malfunction. The Panel reversed the trial court's finding against causation and remanded the case for entry of a judgment consistent with the trial court's alternative findings, that being the rating of the employer's independent physician, which was more detailed than the rating given by employee's private physician. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/merxopn.pdf>

**TERESA G. MOORE v. KNOX COUNTY GOVERNMENT ET AL.**

**No. E2013-01552-WC-R3-WC-Filed-November 12, 2014.** A sixteen year employee sustained compensable shoulder and wrist injuries from a fall. The trial court awarded her uncapped permanent partial disability ("PPD") benefits and denied her claim for temporary total disability ("TTD") benefits. The employer asserted the cap should have been applied, and the employee asserted she should have been entitled to PPD. The Panel determined that since the employee returned to work in the same job with the same pay for three years after her release to return to work and before her job and pay were later reduced, that the cap should have applied and so reversed and capped the award. The Panel further determined that the trial court's refusal to award TTD's was appropriate and affirmed the remainder of the judgment. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/wc-mooreteresaopn.pdf>

**BEN J. MOSBY v. McDOWELL CENTER FOR CHILDREN No. W2012-02715-WC-R3-WC - Filed October 2, 2014.** The employee alleged that he sustained a compensable workers' compensation injury to his left shoulder and knee from a fall at work but did not know the proper procedures to follow to report same. The employer denied the claim for failure to file notice timely. The trial court found that the employee did not comply with the notice statute, T.C.A. § 50-6-201(a)(2008), and dismissed the claim. Citing the adage that ignorance of the law is no excuse, the Panel affirmed the trial court's judgment that timely notice was not provided and did not address any other issue on appeal. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/mosbyopn.pdf>

**JO DEAN NUCHOLS v. BLOUNT COUNTY, TENNESSEE**

**No. E2013-00574-WC-R3-WC-Filed-September 19, 2014.** A twelve year employee alleged that she sustained a mental injury as a result of a confrontation involving personal threats from her supervisor (the Sheriff). The trial court found that she had failed to provide notice of her injury as required by T.C.A. § 50-6-201 and dismissed her complaint. The trial court made an alternative finding that she was permanently and totally disabled as a result of the incident. The Panel affirmed the judgment of the trial court dismissing the employee's claim, agreeing that it

was barred by the statute of limitations due to her failure to provide timely notice. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/nucholsjopn.pdf>

**MICHAEL COREY PETERSON v. McMILLAN'S ROOFING AND HVAC**

**No. E2013-02130-SC-R3-WC- -Filed-August 25, 2014.** An eleven year employee fell from a roof sustaining spinal injuries. He returned to work for his pre-injury employer but resigned after only a few days due to severe nauseating pain. The trial court ruled that the employee did not have a meaningful return to work within his restrictions and awarded uncapped benefits. The Panel affirmed the trial court's judgment that there was not a meaningful return to work since the employee's decision to resign was reasonable given the pain he experienced from his spinal injuries. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/petersonmichaelopn.pdf>

**TIMOTHY RICHARD PLOTNER v. METAL PREP No. W2012-02595-SC-**

**WCM-WC - Filed September 29, 2014.** A fifteen year employee contracted a lung condition while working for the employer. The treating physician informed the employee that the condition was caused by exposure to grain dust. The dust was produced by a grain facility adjacent to the employer's workplace, so the employer denied responsibility for his claim. The trial court concluded that the employee's condition did both occur in and arise from the course of his employment and had rendered him permanently and totally disabled. The Panel noted that even though the cause of the dust was a neighboring plant, there was a direct causal connection in that it was exposure at the employee's workplace that caused the occupational disease, so it affirmed the judgment of the trial court. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/plotneropn.pdf>

**DARLENE POINDEXTER v. ROADWAY EXPRESS d/b/a YRC, INC., ET**

**AL. No. W2013-01968-SC-WCM-WC - Filed September 29, 2014.** A nine year employee fell and allegedly sustained injuries while working as a truck driver. The employer denied the claim, proposing that the fall had only aggravated a pre-existing condition. The trial court entered a judgment in the employer's favor. The Panel determined there was ample evidence supporting the opinions of several physicians that, although there may have been an aggravation of the pre-existing condition, there was not a new, distinct injury other than increased pain. Therefore, there was no causation, and the judgment of the trial court was affirmed without addressing other issues presented. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/poindexteropn.pdf>

**JOHN M. REITZ v. TRINET HR CORPORATION ET AL. No. M2013-01483-WC-R3-WC - Filed August 7, 2014.** The employee alleged that he sustained a compensable aggravation of pre-existing arthritis in his knee as a result of a fall at work. His employer denied that he had a permanent disability as a result of the event. The trial court awarded benefits, as it found that the fall caused an advancement of the pre-existing condition. The Panel found that four physicians agreed that the employee suffered from both degenerative and acute injuries but that the torn meniscus was more likely than not caused by the fall. Additionally there was undisputed evidence that the employee had no symptoms and had received no medical treatment for his knee for twenty-nine years prior to the fall. The Panel affirmed the judgment of the trial court awarding benefits. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/reitz-trinetopnjo.pdf>

**ROADWAY EXPRESS, INC. v. SAMMY T. ROBERTSON No. E2013-02797-COA-R3-CV-Filed-September 26, 2014.** The employee settled a 2005 workers' compensation claim in 2008 including future medical treatment for his injury. The employee later sought to have spine surgery, which the employer denied since a utilization review physician indicated it was not immediately required. The trial court ordered the employer to pay for the medical treatment, which it did and then appealed. The Panel vacated the order for the employer to pay for the treatment as invalid since the administrative process had not been exhausted, so the trial court did not have jurisdiction to have ordered payment. The employer then sought reimbursement for the medical payments, but the trial court dismissed that complaint because, following the prior decision of the Panel, it did not have jurisdiction due to the parties' failure to exhaust their administrative remedies. The Panel reviewed the decision on appeal for the second time and determined that the trial court did, in fact, have subject matter jurisdiction for the suit seeking reimbursement since it was an action for payment made under an erroneous court order, not a workers' compensation action. The Panel reversed the trial court with respect to the dismissal of the suit but did not address any other issue. The full text of the opinion may be viewed here: [http://www.tncourts.gov/sites/default/files/robertson\\_v\\_roadwayopn.pdf](http://www.tncourts.gov/sites/default/files/robertson_v_roadwayopn.pdf)

**RONALD BROWN v. NETHERLANDS INSURANCE COMPANY No. E2013-01935-SC-R3-WC- Filed-July 30, 2014.** A truck driver claimed permanent injury to both knees from a work-related fall. The employer agreed that the injury to the employee's right knee was compensable but that the left knee was not work related. The trial court found for the employee, awarding benefits for injuries to each knee. The Panel observed that the trial court had deemed the employee extremely credible, which was corroborated by employer witnesses, and that there was no testimony as to pain in either knee prior to the accident. The Panel determined that the treating physician who had first-hand knowledge of the injury had shown causation between the traumatic injury and the meniscus tear of his left knee. Accordingly, the Panel affirmed the judgment of the trial court. The full text of the opinion may be viewed here: <http://www.tsc.state.tn.us/sites/default/files/ronaldbrownopn.pdf>

**TAMARA SIMERLY v. CRETE CARRIER CORPORATION No. M2013-00236-WC-R3-WC - Filed February 14, 2014.** The employee was a truck driver attempting to make a delivery of refrigerated goods. The governor on the truck caused her to be unable to meet the delivery time. The employer and customer both refused to reschedule a time; consequently, the employee was forced to wait for hours in her truck without air conditioning with thermometer readings at one hundred forty degrees. She suffered a ruptured brain aneurysm/stroke as she finally exited the truck to complete the unloading process, which she alleged was caused by the high temperatures, anxiety, and emotional stress. The employer denied the claim. The trial court found the injury to be caused by the stress of work conditions and awarded permanent partial disability. The Panel agreed that the physician who physically examined the employee established causation by finding that the injury was caused as a result of sudden high blood pressure induced by intense stress from ten hours in her truck in extreme heat without air-conditioning. The Panel agreed that the unusually stressful situation caused the rupture and affirmed the trial court's judgment. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/simerlytamaraopn.pdf>

**JERRY SIMONS v. A.O. SMITH CORPORATION No. M2013-01350-WC-R3-WC - Filed August 20, 2014.** A twenty-eight year employee alleged he injured his back on two occasions during late 2008. He had a previous injury to the back in 2003 which resolved, and he came back to work with accommodations. His employer initially accepted the second claim as compensable but then denied it after receiving records from the employee's primary care physician. The trial court found the employee to be credible as to the cause of his injuries, gave greater weight to the physician who actually examined him and who provided causation, and awarded permanent workers' compensation benefits to the employee. The Panel determined that the evidence that the work activity was the proximate cause of the new protruding disc, an anatomical change from aggravation and advancement of pre-existing degenerative disc disease, was amply supported, and therefore, compensable, and affirmed the judgment of the trial court. The full text of the opinion may be viewed here: [http://www.tncourts.gov/sites/default/files/simonsjerry.opnjo\\_.pdf](http://www.tncourts.gov/sites/default/files/simonsjerry.opnjo_.pdf)

**ALBERT H. SIMPKINS v. A. O. SMITH CORPORATION, ET AL.**

**No. M2012-02665-WC-R3-WC - Filed January 15, 2014.** After nine years of employment, an employee filed a claim for a low back injury in 2006. It was accepted and medical treatment supplied, including surgery on his back although both back and neck surgery were recommended. He returned to work with restrictions, which the employer attempted to accommodate. After a month in the accommodated position, the employee informed the employer that the new job was causing increased back pain so he was assigned to a different job with the hope that it would be more tolerable. Neck pain from the second accommodated position resulted in the employee returning to the physician, who recommended cervical surgery.

Utilization Review denied the need for the surgery, but the State's Medical Director ultimately ordered it done. After the surgery, the employee was unable to return to work for the employer. After having settled the 2006 claim for the earlier lumbar and cervical injury, the employee filed a new claim seeking compensation for aggravation of that injury in 2008. The employer contended the employee's condition was a continuation of the prior injury, but the trial court found that the employee had sustained a new cervical injury due to the repetitive tasks of the job and awarded the employee permanent total disability benefits. The Panel determined that the record did not contain sufficient competent evidence to support the trial court's conclusion that the neck pain that employee claimed started after the second accommodated position was a new injury rather than a continuation of the 2006 injury. The Panel found that the physician's opinion on which the trial court relied was based on incomplete historical evidence and could not be credited; therefore, the Panel reversed the judgment of the trial court and remanded the case with instructions that it be dismissed. The full text of the opinion may be viewed here: [http://www.tncourts.gov/sites/default/files/simpkinsalbertopn\\_jo.pdf](http://www.tncourts.gov/sites/default/files/simpkinsalbertopn_jo.pdf)

**SAMUEL ARTHUR SKAGGS V. MARTY PHILLIPS d/b/a PHILLIPS**

**CONCRETE ET AL. No. E2012-02479-WC-R3-WC-Filed-January 15, 2014.** The employee was injured when a concrete grinder exploded, breaking his jaw and several teeth and causing facial lacerations. After surgery and extensive dental treatment, the employee was not returned to work by his employer. The trial court found that the employee had not had a meaningful return to work, had sustained a permanent vocational disability due to his difficulty speaking, suffered excessive salivation and speech difficulties and awarded benefits accordingly. The Panel determined that the employee's dentist's assigned impairment rating was valid in that he had used the American Medical Association Guides, and it was based on sound methodologies and foundation. Additionally, his was the only medical opinion provided so it was uncontradicted. The Panel also agreed that vocational disability relies on more than whether one can perform the job and found the dentist's testimony helpful in establishing permanency of the injury and the diminishment of the employee's earning capacity. Consequently, the Panel affirmed the judgment of the trial court. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/skaggssamuelopn.pdf>

**DENNIE STOUGH v. GOODYEAR TIRE AND RUBBER COMPANY**

**ET AL. No. W2012-02275-WC-R3-WC - Filed April 11, 2014.** A six year employee injured his lower back, had surgery, returned to work, and settled his claim. Several months later, he re-injured his lower back. After several surgical procedures, he was unable to return to work. He filed for workers' compensation from both his employer and the Second Injury Fund. The trial court awarded permanent total disability benefits, apportioning 50% of the award to the employer and 50% to the Fund. The Fund appealed, contending that the trial court erred by assigning any liability to it because the later injury rendered the employee totally disabled without regard to the first injury. The Panel indicated that it was unable to review the issues, so it

reversed the judgment of the trial court with respect to the apportionment and remanded the case back to the trial court with instruction to provide the basis for the apportionment of liability between the Fund and the employer pursuant to T.C.A. §50-6-208(a)(1). The trial court must determine what disability would have resulted to the employee from the second injury if he had not suffered the first injury and had no prior disabilities. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/stoughopn.pdf>

**JOSE UMANZOR v. ZURICH AMERICAN INSURANCE COMPANY ET AL. No. W2012-02568-WC-R3-WC - Filed April 10, 2014.** A ten year employee was injured on the job but waited two years to provide written notice of his injury to his employer. He claimed that he provided immediate verbal notice to his supervisor and that his chiropractic physician called his employer within two days of the injury when he went to him for treatment and was told the employee's injury was not covered. The physician corroborated this telephone call. However, the employee had previously been a foreman for this employer, had filed several injury reports on behalf of other employees during his tenure as foreman, and therefore knew the proper procedure for reporting. The trial court found that actual notice had not occurred for two years, rather than the thirty days mandated by statute, that the employee had not provided a reasonable excuse for his failure to provide timely notice and that his claim was therefore barred by the statute of limitations, so the trial court entered judgment in the employer's favor. The Panel affirmed the trial court's judgment that the claim was barred by the statute of limitations. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/umanzoropn.pdf>

**UNITED PARCEL SERVICE, INC. ET AL. V. KENNETH CAMERON No. E2013-02001-SC-R3-WC- Filed-August 15, 2014.** The work vehicle in which a twenty-eight year employee was riding was hit head-on by another motor vehicle causing him to sustain injuries to his left elbow and shoulder. The trial court found the credibility of the employee's shoulder claim "suspect" since credible physicians had testified that he did not require surgery, did not retain a permanent disability, and was released to regular duty. Further, the trial court noted that it is powerless to issue medical decrees ordering surgery without a physician ordering same. The trial court's final judgment was that the employee's left elbow was permanently injured but that his left shoulder, although injured at the time of the accident, was not permanently injured. The Panel determined that although the employee believed he had an injury to his left shoulder that required surgery, this had not been substantiated by the attending physicians, so the Panel affirmed the trial court's decision not to order surgery, not to find permanent impairment to the left shoulder and not to award additional temporary benefits. The full text of the opinion may be viewed here: [http://www.tncourts.gov/sites/default/files/ups\\_cameron.pdf](http://www.tncourts.gov/sites/default/files/ups_cameron.pdf)

**MARY WHEETLEY v. STATE OF TENNESSEE No. M2013-01707-WC-R3-WC - Filed June 25, 2014 Claims Commission.** A state employee nurse believed she had contracted tuberculosis when she came into direct contact with a patient's blood because she had failed to put on her gloves. The claims commissioner dismissed the nurse's claim since she failed to produce expert medical evidence that she had tuberculosis. Her self-diagnosis was not admissible as evidence. The issue of her failure to follow safety procedures was not raised. The Panel affirmed the judgment of the trial court dismissing the claim since there was no evidence of a diagnosis of tuberculosis and consequently, no evidence of an injury or illness upon which to file a claim. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/wheetleymaryopnjo.pdf>

**TEDDY WAYNE WILCUTT V. CAM ELECTRIC SYSTEMS ET AL.**

**No. W2013-00772-WC-R3-WC - Filed July 28, 2014.** An employee sustained work-related injuries to his head, neck, and shoulders after being struck in the head by a ladder that fell from a roof. Employee was treated and returned to work, working for two years until the gradually increasing pain in his neck and numbness and tingling in his arms eventually resulted in his inability to perform his duties. At that point, he was diagnosed with four herniated discs in his neck and underwent fusion surgery. The trial court deemed the employee credible, which was corroborated by employer. Prior to the injury, the employee had no problem climbing a ladder, no difficulty with balance or strength in his arms, and no pain in his neck. After the injury, he experienced pain and stiffness in his neck, numbness and a tingling pain in both arms and legs, and a loss of strength in his arms. The trial court awarded permanent partial disability benefits. The Panel found that the evidence of pre- and post- body function was uncontradicted and supported the trial court's decision. Further, the Panel found that the trial court's decision to choose the physician who provided causation over the one that stated only that the injuries were merely consistent with being hit in the head with a ladder, but not necessarily the direct cause of employee's herniated discs, appropriate, and affirmed the trial court's judgment. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/wilcuttopn.pdf>

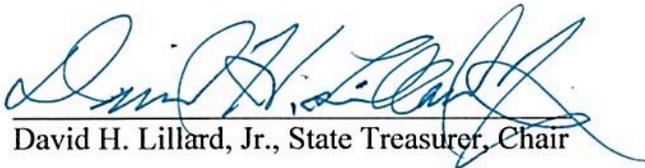
**KAREN R. WOODS v. ACE-AMERICAN INSURANCE ET AL. No. E2013-01916-SC-R3-WC- Filed-August 15, 2014.** A seven year employee fell at work and suffered a lower back injury. She received medical treatment, including two back surgeries, over a period of years. The trial court awarded permanent disability benefits based on the employee's back injury and a bladder and bowel dysfunction that developed during her subsequent treatment. The trial court chose to use the rating of the medical expert who included a disability percentage for the bladder and bowel dysfunction which was caused by the treatment of the work-related injury, and awarded uncapped benefits based on that rating. The Panel agreed with the trial court that the additional disability was directly caused by the treatment of the work related injury. The Panel further credited the trial court's determination that the employee was highly credible, knew the workplace as a long term employee and manager, and knew there was no work

available that she could so within her restrictions, so it found her resignation was reasonable, leading to the affirmation of the trial court's uncapped award. The full text of the opinion may be viewed here: [http://www.tncourts.gov/sites/default/files/wc-woods\\_v\\_ace\\_american.pdf](http://www.tncourts.gov/sites/default/files/wc-woods_v_ace_american.pdf)

## **CONCLUSION**

Pursuant to T.C.A. § 50-6-121(i), the Advisory Council on Workers' Compensation respectfully submits this report on significant Supreme Court decisions for the 2014 Calendar Year through December 15, 2014. An electronic copy of the report will be sent to the Governor and to the Speaker of the House of Representative, the Speaker of the Senate, the Chair of the Consumer and Employee Affairs Committee of the House of Representative, the Chair of the Commerce, Labor and Agriculture Committee of the Senate, and the Chair and Co-chair of the Special Joint Committee on Workers' Compensation, if so appointed. A printed copy of the report will not be mailed. Notice of the availability of this report will be provided to all members of the 109<sup>th</sup> General Assembly pursuant to T.C.A. § 3-1-114. In addition, the report will be posted under the Advisory Council on Workers' Compensation tab of the Tennessee Treasury Department website: <http://treasury.tn.gov/claims/wcadvisory.html>

Respectfully submitted on behalf of the Tennessee Advisory Council on Workers' Compensation,



David H. Lillard, Jr., State Treasurer, Chair