

STATE OF TENNESSEE



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*Advisory Council on Workers' Compensation*

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Commissioner Burns Phillips  
Commissioner Julie Mix-McPeak  
Lynn Ivanick, Administrator

January 15, 2014

Honorable Bill Haslam  
Governor  
State of Tennessee  
600 Charlotte Avenue  
First Floor, State Capitol  
Nashville, TN 37243

Honorable Ron Ramsey  
Lt. Governor and Speaker of the Senate  
State of Tennessee  
301 6th Avenue North  
1 Legislative Plaza  
Nashville, TN 37243

Honorable Beth Harwell  
Speaker of the House of Representatives  
State of Tennessee  
301 6<sup>th</sup> Avenue North  
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Nashville, TN 37243

Re: **2013** Annual Report of Significant Tennessee Supreme Court Decisions on Workers' Compensation  
Prepared by the Advisory Council on Workers' Compensation

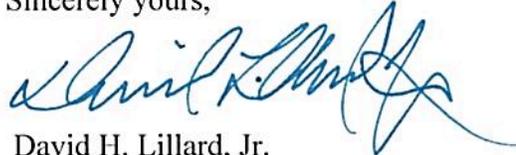
Dear Governor Haslam, Lieutenant Governor Ramsey and Speaker Harwell,

Pursuant to Tennessee Code Annotated §50-6-121(e), the Advisory Council on Workers' Compensation hereby submits an annual report reviewing significant Tennessee Supreme Court cases involving workers' compensation cases in 2013. If you or your staff have any questions or need further information regarding the report, please

contact me at (615) 741-2956 or the Administrator of the Advisory Council, Lynn Ivanick, at (615) 741-4358 or [Lynn.Ivanick@tn.gov](mailto:Lynn.Ivanick@tn.gov).

This letter and the enclosed annual report will also be distributed via email to all members of the Tennessee General Assembly. Thank you for the continuing opportunity to be of service to each of you, the General Assembly and the People of Tennessee.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "David H. Lillard, Jr.", with a stylized flourish at the end.

David H. Lillard, Jr.  
State Treasurer and Chairman

CC: (w/enclosure)

Honorable Russell Humphrey, Chief Clerk  
Tennessee State Senate of the Tennessee General Assembly

Honorable Joe McCord, Chief Clerk  
Tennessee House of Representatives of the Tennessee Assembly

# STATE OF TENNESSEE

## *Advisory Council on Workers' Compensation*

<http://treasury.tn.gov/claims/wcadvisory.html>



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### 2013 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 Ivanick, Administrator**

## **Significant 2013 Tennessee Supreme Court Workers' Compensation Decisions**

### **INTRODUCTION**

Pursuant to Tennessee Code Annotated (“T.C.A.”) § 50-6-121(g), 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 both the actual language in some instances and paraphrasing in others of those significant decisions from the Tennessee Supreme Court.

### **The Tennessee Supreme Court**

**TIMMY DALE BRITT v. DYER’S EMPLOYMENT AGENCY, INC. ET AL.**  
**No. W2011-00929-SC-WCM-WC - Filed January 22, 2013**

A temporary staffing agency employer assigned the employee to work temporarily at a manufacturing facility. The employee sustained a compensable work-related injury there and reported the injury to the staffing employer. At about the same time, the manufacturing facility notified the employer that employee’s assignment had ended. The employer terminated the employee’s employment and did not return the employee to work after the injury. The employee sought workers’ compensation benefits and the trial court awarded benefits, capping them at one and one-half times the medical impairment rating pursuant to T.C.A. § 50-6-241(d)(1)(A). The Panel vacated the judgment of the trial court and remanded for a determination of whether the employee had a meaningful return to work. Upon granting appeal, the full Court held that because the employer had neither returned the employee to work, nor offered him an opportunity to return to work after his injury, nor terminated his employment for misconduct, the award of benefits was governed by the statute authorizing benefits up to six times the medical impairment rating, T.C.A. § 50-6-241(d)(2)(A). The judgments of the trial court and Panel were vacated, and the case remanded to the trial court for proceedings consistent with the decision. The full case may be viewed here: [http://www.tncourts.gov/sites/default/files/britttd\\_opn.pdf](http://www.tncourts.gov/sites/default/files/britttd_opn.pdf)

**JOSHUA COOPER, ET AL. v. LOGISTICS INSIGHT CORP., ET AL.**  
**No. M2010-01262-SC-R11-CV - Filed January 16, 2013**

The Court’s majority decision agreed with the trial court’s position that an employer’s statutory subrogation lien for workers’ compensation benefits against a third party tortfeasor who caused employee’s injury does not include the cost of future medical benefits that may be paid on behalf

of the employee. The employer had asserted a “common law and equitable right of subrogation” in addition to the statutory lien to be derived from any recovery obtained from the third party defendant. The Court determined that T.C.A. § 50-6-112(c)(1) (2008) does not extend to the future medical benefits to be provided by the employer. Finding that the trial court’s dismissal of the employer’s petition to intervene was error, however, the case was remanded to the trial court for further proceedings consistent with its opinion.

The full **majority** opinion of the case may be viewed here: [http://www.tncourts.gov/sites/default/files/joshua\\_cooper\\_v\\_logistics\\_insight\\_corp.pdf](http://www.tncourts.gov/sites/default/files/joshua_cooper_v_logistics_insight_corp.pdf)

Justice Koch’s dissenting opinion stated that T.C.A. § 50-6-112 should be applied according to its plain meaning and not “harmonized” with other changes in the Workers’ Compensation Law that were made after the statute was enacted as he believed the majority had done. Justice Koch explained that the General Assembly has balanced the interests of employees and employers by giving employers both a subrogation interest in the employee’s recovery from a third party (T.C.A. § 50-6-112(c)(1)) and also a credit on the employer’s future liability as it accrues (T.C.A. § 50-6-112(c)(2),(3)), so that this employer was entitled to both. He indicated that he would have reversed the trial court’s judgment and remanded the case with directions to address and resolve the remaining issues consistent with his opinion. The full **dissenting** opinion may be viewed here: [http://www.tncourts.gov/sites/default/files/cooperj\\_dis.pdf](http://www.tncourts.gov/sites/default/files/cooperj_dis.pdf)

## **FURLOUGH v. SPHERION ATLANTIC WORKFORCE**

**No. M2011-00187-SC-WCM-WC - Filed February 22, 2013**

In this case, the Court clarified procedures with respect to workers’ compensation settlements approved by the Tennessee Department of Labor and Workforce Development (“Department”). Both the trial court and the Panel determined that if the Department’s Form SD-1 was not complete, then a workers’ compensation settlement was not final. The full Court granted the right to appeal and overturned the trial court and Panel decisions indicating that it was the Department’s responsibility, and not the court clerks’, to make sure the SD-1 form was complete, and, if it was accepted as “complete” then the settlement was final. The full case may be viewed here: <http://statecasefiles.justia.com/documents/tennessee/supreme-court/m2011-00187-sc-wcm-wc.pdf?ts=1370456800>

## **WILLIAM H. MANSELL v. BRIDGESTONE FIRESTONE NORTH AMERICAN TIRE, LLC ET AL.**

**No. M2012-02394-WC-R3-WC - Filed August 20, 2013**

Unable to settle a claim with the employer upon receiving diverse impairment ratings from physicians, the employee requested the court appoint an independent medical examiner. The trial court denied the request, but, in the interim, the employee voluntarily submitted to an

independent medical examination which produced a third impairment rating. In a unanimous opinion, the Court upheld the constitutionality of the workers' compensation law that gives priority to the opinion of an independent medical examiner, concluded that the law did not violate principles of due process and did not constitute an infringement by the legislative branch upon the exclusive powers of the judiciary. The Court then based the employee's award on the third rating since no clear and convincing evidence contradicted the presumption of correctness given to that independent medical opinion. The full case may be viewed here: [http://www.tncourts.gov/sites/default/files/mansellwilliamopn\\_0.pdf](http://www.tncourts.gov/sites/default/files/mansellwilliamopn_0.pdf)

**VANDALL v. AURORA HEALTHCARE**

**No. W2011-02042-WC-R3-WC - Filed April 24, 2013**

Employee claimed her fall and injury occurred due to her foot sticking to substances spilled on the floor. The issue for the Court was whether the trial court's determination that the employee had sustained her burden of proving the injury to be work-related and therefor compensable rather than idiopathic in nature should be given deference. The Court determined that it should and affirmed the trial court's judgment. The **majority** opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/vandallmopn.pdf>. The dissenting opinion stated that the employee's improper shoes, rather than a work hazard, created the fall and the injury should have been considered idiopathic and thereby not compensable. The **dissenting** opinion may be viewed here: [http://www.tsc.state.tn.us/sites/default/files/vandallm\\_dissent.pdf](http://www.tsc.state.tn.us/sites/default/files/vandallm_dissent.pdf)

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

Appeals of trial court decisions in cases involving workers' compensation are referred directly to the Supreme Court's Special Workers' Compensation Appeals Panel for hearings. The Panel reports its findings of fact and conclusions of law and such judgments automatically become the judgment of the full Court in 30 days barring the grant of a motion for review. Tennessee Supreme Court Rule 51 and T.C.A. § 50-6-225(e). The following is an alphabetical list with brief outlines of the subject matter of pertinent cases heard by the Panel this year.

**DAVID AMADO v. BRIDGESTONE FIRESTONE AMERICAS TIRE OPERATIONS, LLC, et al.** No. M2012-00094-WC-R3-WC – Filed January 30, 2013. Employer accepted compensability of the right, but not the left shoulder claim of employee. Due to a dispute as to the impairment rating, the parties took part in the Medical Impairment Registry process regarding the right shoulder, but the trial court found that medical opinion to be overcome by clear and convincing evidence. The trial court also awarded benefits for the left shoulder and denied employer's claim that it was due an offset under T.C.A. § 50-6-114(b) for benefits paid

under its accident and sickness policy since the policy didn't specifically refer to an offset. The Panel determined that the trial court erred with respect to the denial of the offset, but affirmed the remainder of the judgment. The full text of the opinion may be viewed here:

[http://www.tncourts.gov/sites/default/files/amado\\_v\\_bridgestone\\_opnjo.pdf](http://www.tncourts.gov/sites/default/files/amado_v_bridgestone_opnjo.pdf)

**PAUL E. ARNETT v. MCMINN COUNTY GOVERNMENT, et al. No. E2012-01356-WC-R3-WC – Filed July 9, 2013.** Employee filed a claim for permanent and totally disability from a job related injury. Employer acknowledged compensability of the shoulder and leg injuries, but not the spinal injuries. The trial court found that all injuries were compensable and granted permanent total disability benefits, but not the medical costs incident to the second of two spine surgeries. The Panel affirmed the trial court's judgment, but modified it to require the employer to pay the expenses of the second surgery as well. The full text of the opinion may be viewed here: <http://www.tsc.state.tn.us/sites/default/files/arnettpaulopncor.pdf>

**BELLSOUTH TELECOMMUNICATIONS, INC. v. ALONZO W. HOWARD No. M2012-00788-WC-R3-WC – Filed April 11, 2013.** Dueling medical testimony resulted in the trial court denying both an employee's claim for work related bilateral carpal tunnel syndrome and his motion to compel discovery. Affirming the trial court's judgment, the Panel found that the evidence did not preponderate against the trial court's finding, the trial court did not abuse its discretion in accepting the expert medical witness' testimony over the opinions of two other physicians and that employee failed to carry his burden of proving that the injury arose out of his employment. The full text of the opinion may be viewed here: <http://cases.laws.com/tennessee-bellsouth-telecommunications-inc-v-alonzo-w-howard.pdf>

**CARL BOHANNAN v. EXPEDITED TRANSPORT ASSOCIATES, INC. et al. No. M2012-00694-WC-R3-WC – Filed April 10, 2013.** The employee injured his shoulder and back when his tractor trailer overturned. Employer agreed that his shoulder injury was compensable, but denied that employee had sustained a permanent back injury since he had a previous workers' compensation claim and settlement for his back. The trial court determined that the employee had suffered a new, compensable back injury, was permanently and totally disabled, and apportioned the judgment between the employer and the Second Injury Fund. The Panel affirmed the judgment of the trial court. The full case may be viewed here: [https://www.tba.org/sites/default/files/bohannonc\\_041013.pdf](https://www.tba.org/sites/default/files/bohannonc_041013.pdf)

**LARRY KEITH BRAGG v. BEACH OIL COMPANY, INC. et al. No. M2012-02256-WC-R3-WC – Filed August 21, 2013.** Employee's treating panel physician recommended surgery after conservative treatment failed to provide relief. The employer's utilization review provider denied approval of the surgery which was affirmed by the Medical Director of the Tennessee Department of Labor & Workforce Development. The employee was unable to return to work.

The employee went to the emergency room several months later due to extreme pain and was diagnosed with a herniated disc requiring surgery at the same location as previously recommended by his treating physician. The trial court found that the herniated disc and resulting surgery were compensable as they were caused by the work injury and the Panel affirmed that judgment, although it remanded the case for an award consistent with six times the medical impairment rating. The full text of the opinion may be viewed here: [http://www.tncourts.gov/sites/default/files/bragg\\_v\\_beach\\_oil\\_opnjo.pdf](http://www.tncourts.gov/sites/default/files/bragg_v_beach_oil_opnjo.pdf)

**MICHAEL ANTHONY BRIM v. LIBERTY MUTUAL INSURANCE COMPANY et al. No. M2012-01565-WC-R3-WC – Filed October 23, 2013.** The employee claimed a right shoulder and left hip injury. The employer accepted as compensable the right shoulder, but denied the hip. The employee was able to return to work. The trial court found the hip injury to be compensable since it was an aggravation and advancement of a pre-existing condition and awarded benefits and the Panel affirmed. The full text of the opinion may be viewed here: [http://www.tncourts.gov/sites/default/files/brimopn\\_.pdf](http://www.tncourts.gov/sites/default/files/brimopn_.pdf)

**JAMES CARRIGAN v. DAVENPORT TOWING AND RECOVERY SERVICES, LLC, et al. No. W2012-00586-SC-WCM-WC – Filed April 11, 2013.** The employee sustained a lower back injury which employer denied as new, but asserted was related to a prior claim and should simply be considered continuous medical treatment. The trial court found the injury to be compensable and awarded additional temporary and permanent disability benefits, but denied certain discretionary costs requested by the employee. The Panel reversed the trial court's decision not to award certain discretionary costs, but affirmed the remainder of the decision. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/carriganopn.pdf>

**LINDA CARTEN ex rel. DANIEL JOHN CARTEN v. MBI and/or MR. BULT'S, INC. et al. No. W2012-01507-SC-WCM-WC – Filed November 14, 2013.** The employee died from traumatic asphyxiation, but his willful misconduct and willful failure to use a safety device which ultimately was determined to have led to the injury resulted in a judgment for the employer which was affirmed by the Panel. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/cartenlindaopn.pdf>

**DAN A. CONATSER v. FENTRESS FARMERS COOPERATIVE AND SENTRY INSURANCE, a MUTUAL COMPANY No. M2012-01798-WC-R3-WC-Filed July 26, 2013.** An employee sustained multiple injuries from a work incident, but returned to work. The claim was settled with benefits for permanent partial disability to the body as a whole plus future medical benefits. The employee later had related and recommended surgery on his left shoulder after which he developed an infection requiring a second surgery. Due to that unfortunate experience, he declined to have recommended surgery on his right shoulder. The employee later sought reconsideration due to the fact that he had to leave his employment since he was no

longer physically able to perform his job due to the injuries. The trial court found, and the Panel affirmed that the employee was entitled to reconsideration, but reversed the trial court's finding of permanent partial disability. The full text of the opinion may be viewed here:

[http://www.tsc.state.tn.us/sites/default/files/conatser-fentressopn\\_jo.pdf](http://www.tsc.state.tn.us/sites/default/files/conatser-fentressopn_jo.pdf)

**LISA G. DIXON v. NISSAN NORTH AMERICA, INC. et al. No. M2012-02495-WC-R3-WC – Filed September 5, 2013.** Employee was awarded six times her impairment rating. Evidence from numerous physicians assigning various impairment ratings supported the trial court's findings, so the judgment was affirmed by the Panel. The full text of the case may be viewed here: [http://www.tncourts.gov/sites/default/files/dixonvnissan\\_opn\\_jo.pdf](http://www.tncourts.gov/sites/default/files/dixonvnissan_opn_jo.pdf)

**JEROME DOUGLAS v. LEDIC REALTY SERVICE et al. No. W2012-00345-SC-WCM-WC – Filed February 13, 2013.** The trial court granted employer's motion for involuntary dismissal under Tennessee Rule of Civil Procedure 41.02(2) since the employee did not present any medical expert testimony to indicate that his injury was compensable. The Panel agreed that the employee failed to sustain his burden of proof and affirmed the trial court's judgment. The full text of the opinion may be viewed here:

[https://www.tba.org/sites/default/files/douglasj\\_021913.pdf](https://www.tba.org/sites/default/files/douglasj_021913.pdf)

**RUSSELL E. DOWNING, II v. DAY & ZIMMERMAN, HPS, INC., et al. No. W2011-02455-WC-R3-WC – Filed March 26, 2013.** After providing initial medical treatment, the employer refused additional medical treatment. The trial court found the claim to be compensable and awarded the employee permanent total disability benefits with no liability to the Second Injury Fund. The Panel affirmed the trial court's judgment. The full text of the opinion may be viewed here: <http://www.tsc.state.tn.us/sites/default/files/downingopn.pdf>

**MICHAEL DRAINE v. S & ME, INC. et al. No. E2012-00384-WC-R3-WC – Filed January 22, 2013.** The employee's 2000 injury was settled in 2003. In 2009 the employee and insurer, with approval of the Circuit Court, came to an agreement to close future medicals in exchange for a lump sum, provided it was approved by Medicare. Medicare declined to approve and suggested a larger sum. The employer and insurer moved to dismiss based on improper venue, which the trial court denied. The trial court ordered the employer to pay a larger sum pursuant to Medicare's suggestion. The Panel reversed the trial court's denial of the motion to dismiss, and found the remainder of the issues unnecessary to consider. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/drainemichaelopn.pdf>

**GEORGE WAYNE EDWARDS v. VELMA CHILDS, et al. No. E2012-02592-WC-R3-WC – Filed December 10, 2013.** The employee suffered an eye laceration from the kick-back of a chain saw. Although the employee initially returned to work, after eight prescribed corrective surgeries, the employee could not return to work due to pain. The employer argued that the medical evidence was not credible and the claim should be capped at one and one-half times

The trial court found that the employee was permanently and totally disabled and did not have a meaningful return to work due to the injury. The Panel affirmed the trial court's judgment. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/edwardsopnfiledcor.pdf>

**LORRAINE ENGLISH v. COMPASS GROUP USA, INC. d/b/a CANTEEN VENDING SERVICES No. E2012-02732-WC-R3-WC – Filed December 9, 2013.** The employee was injured upon a fall from an attempt to remove a cat from the employer's premises. The employer denied the claim contending the fall resulted from a non-work event and that employee had wilfully failed to use a ladder as a safety device as required. The trial court found that the activity was at least partly work-related and therefore compensable. The Panel affirmed the trial court's judgment. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/englishvcompassopn.pdf>

**TERRY FLATT v. ERMIC No. W2012-00483-SC-WCM-WC – Filed January 10, 2013.** The trial court determined that an employee was entitled to reconsideration when his position was terminated due to a reduction in the workforce, even though he was offered part-time and later full-time employment several months after his termination date. The trial court judgment was affirmed. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/flattopn.pdf>

**STANLEY FRANKLIN v. VOUGHT AIRCRAFT INDUSTRIES, INC. et al. No. M2012-00864-WC-R3-WC – Filed April 10, 2013.** Employee sustained a compensable injury requiring surgery. Before his return to work the company was sold and all parties agreed the cap did not apply pursuant to T.C.A. § 50-6-241(d). The trial court awarded the maximum amount permissible for employee's impairment rating and the employer appealed the award as excessive. 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/franklinstanley\\_opnjo.pdf](http://www.tsc.state.tn.us/sites/default/files/franklinstanley_opnjo.pdf)

**TIMOTHY GILLIAM v. BRIDGESTONE NORTH AMERICAN TIRE, LLC. No. M2012-02436-WC-R3-WC – Filed December 16, 2013.** The employee was injured on the job, returned to work and settled his claim. After his physician later increased his restrictions for an unrelated injury, he was laid off. He was later returned to work under a confidential settlement agreement between the employer and the EEOC. The trial court held that the employee was entitled to seek reconsideration and the Panel affirmed. The full text of this case may be viewed here: <http://www.tncourts.gov/sites/default/files/gilliamtimothyopn.pdf>

**ERIC GRIER v. ALSTOM POWER, INC. No. E2012-01394-WC-R3WC – Filed April 10, 2013.** The employee developed asthma as a result of exposure to welding fumes and settled his claim with a provision for future medical care and a specified authorized treating physician. Post settlement, the employer refused to pay for the physician's recommended continuing treatment

because the employee was no longer exposed to the welding fumes. The trial court ordered the employer to pay for the recommended treatment. The trial court's judgment was affirmed. The full text may be viewed here:

<http://www.tncourts.gov/sites/default/files/griervalstompoweropn.pdf>

**DANNY RAY GROOMS v. CITY OF TRENTON, TENNESSEE, et al. No. W2012-01872-WC-R3-WC-Filed September 12, 2013.** Dueling physicians' causation determinations were decided in favor of the employer and the Panel upheld the trial court's decision. The full text of the decision may be viewed here: <http://www.tncourts.gov/sites/default/files/groomsopn.pdf>

**GARRY HALL v. NESCO, INC. et al. No. M2012-02368-WC-R3-WC – Filed August 7, 2013.** The employee's treating panel physician opined that the employee had developed interstitial lung disease from his exposure to toxic substances while working. The employer hired a second physician for a consultation and he testified that the employee's condition was most likely related to pneumonia instead. The trial court found for the employee as did the Panel. The full text of the opinion may be viewed here:

[http://www.tncourts.gov/sites/default/files/hall\\_v\\_nesco\\_et\\_al\\_opn\\_jo.pdf](http://www.tncourts.gov/sites/default/files/hall_v_nesco_et_al_opn_jo.pdf)

**DAVID HARDY v. GOODYEAR TIRE & RUBBER CO. No. W2012-00396-SC-WCM-WC – Filed May 9, 2013.** The trial court determined that the one year statute of limitations in gradual injury cases is based on the "knew or should have known" date. The Panel affirmed the trial court's judgment. Judge Childress dissented with respect to the statute of limitations since the evidence suggested the employee knew the hearing loss was work related long before the formal medical diagnosis. The full text of the **majority** opinion may be viewed here:

<http://www.tncourts.gov/sites/default/files/hardyopn.pdf> The text of the **dissenting** opinion maybe be viewed here: <http://www.tncourts.gov/sites/default/files/hardydcon.pdf>

**BILLY HILL v. HUTCHERSON METALS, INC. et al. No. W2011-01834-SC-WCM-WC – Filed March 5, 2013.** The trial court held that Mr. Hill's rheumatoid arthritis, which caused his inability to work, was not aggravated by his work injury but that the work injury had caused a radiculopathy that resulted in a permanent partial disability to the body as a whole. The trial court's judgment was affirmed by the Panel. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/hillbillyopn.pdf>

**LATARIUS HOUSTON v. MTD CONSUMER GROUP, INC. No. W2012-01975-WC-R3-WC – Filed October 25, 2013.** The parties stipulated to compensability and impairment rating, but appealed only based upon the calculation of the average weekly wage. The Panel reversed the trial court's judgment and remanded for computation of the average weekly wage to include the weeks of layoff for a seasonal worker who has foreseen and expected time off. The full text may be viewed here: <http://www.tsc.state.tn.us/sites/default/files/houstonopn.pdf>

**PAMELA INGRAM v. HEADS UP HAIR CUTTING CENTER No. M2012-00464-WC-R3-WC – Filed April 10, 2013.** The trial court found employee's gradual injury to her cervical spine to be timely and compensable, but capped the award at one and one-half times pursuant to T.C.A. § 50-6-241(d)(1) since she was terminated for cause. Employer's last injurious injury rule defense was denied. The trial court's judgment was affirmed. The full text of the opinion may be viewed here: [http://www.tncourts.gov/sites/default/files/ingrampamela\\_opnjo.pdf](http://www.tncourts.gov/sites/default/files/ingrampamela_opnjo.pdf)

**MICHAEL JOHNSON v. ZELEDYNE, LLC et al. No. M2013-00147-WC-R3-WC – Filed December 11, 2013.** The trial court awarded the maximum disability benefit available to the employee for his knee injury. The employer appealed the court's decision not to credit an evaluating physician's opinion since it was based on a records review only. Although the Panel found that the trial court erred in excluding the evaluating physician's testimony, it also determined that the error was harmless, so affirmed the trial court's judgment. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/johnsonmichaelopnjo.pdf>

**ANTHONY M. JORDAN v. WHIRLPOOL/JACKSON DISHWASHING PRODUCTS. No. W2011-02689-SC-WCM-WC – Filed January 10, 2013.** Even though the employee only reported injuries to his hand and wrist, a repetitive motion injury to the shoulder caused by the same event was deemed to be compensable. The Panel affirmed the trial court's judgment. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/jordanaopn.pdf>

**ROBERT LAURENCE v. TOWER INSURANCE COMPANY No. E2012-00127-WC-R3-WC – Filed January 3, 2013.** The employee's workers' compensation claim was denied by the employer, but the trial court found it compensable and awarded temporary total and permanent partial benefits. The Panel determined that the employee was entitled to temporary total disability benefits only until the date he returned to work, so found that the trial court erred in awarding extra weeks, but the judgment of the trial court was otherwise affirmed. The full text of the opinion may be viewed here: <http://cases.laws.com/tennessee-robert-laurence-v-tower-insurance-company.pdf>

**DAVID D. LAWRENCE v. MIDWESTERN INSURANCE ALLIANCE No. E2012-00632-WC-R3\_WC – Filed March 19, 2013.** The trial court, upon contradictory evidence from cardiologists, awarded permanent total disability benefits to an employee whose pre-existing heart failure was worsened by accidental inhalation of cement dust on the job. The judgment of the trial court was affirmed by the Panel. The full text of the opinion may be viewed here: <http://cases.laws.com/tennessee-david-d-lawrence-v-midwestern-insurance-alliance.pdf>

**ARMETHIA D. LIVELY ex rel. ROBERT E. LIVELY v. UNION CARBIDE CORPORATION No. E2012-02136-WC-R3-WC – Filed August 13, 2013.** The trial court

found that a widow may only recover funeral expenses after an asbestos-related death of her husband, because he had already received the maximum award of disability benefits prior to his death. Her entitlement could not be in excess of the maximum with the exception of the funeral expenses which is a separate non-disability award. Accordingly, the trial court's award was affirmed. The full text of the opinion may be viewed here:

[http://www.tsc.state.tn.us/sites/default/files/e2012-02136\\_lively\\_1\\_0.pdf](http://www.tsc.state.tn.us/sites/default/files/e2012-02136_lively_1_0.pdf)

**LINDA LOU MCDUGAL v. GOODYEAR TIRE & RUBBER COMPANY No. W2011-02302-WC-R3\_WC – Filed March 7, 2013.** A statute of limitations issue was found by the trial court to be in favor of the employee, along with the claim being compensable since it was not found to be due to a pre-existing degenerative condition. The Panel affirmed the trial court's judgment. The full text of the opinion may be viewed here:

<http://www.tncourts.gov/sites/default/files/mcdougalopn.pdf>

**BETTY NORTON v. WHIRLPOOL CORP. No. M2012-00966-WC-R3-WC – Filed July 26, 2013.** The employee claimed permanent disability from a work-related right shoulder injury. The employer denied that the injury caused permanent disability. The trial court found the employee permanently and totally disabled and the Panel affirmed. The full text of the opinion may be viewed here: [http://www.tncourts.gov/sites/default/files/norton\\_v\\_whirlpool\\_opnjo.pdf](http://www.tncourts.gov/sites/default/files/norton_v_whirlpool_opnjo.pdf)

**LAWRENCE OWSLEY v. CON-WAY TRUCKLOAD, INC., et al. No. E2011-02631-WC-R3-WC – Filed March 7, 2013.** The employer contended that the employee's claim for a back injury due to a fall from his tractor trailer was barred by the affirmative defense of misrepresentation of his physical condition, was not compensable, and was excessive. The trial court found that the employee did not intentionally misrepresent his physical condition, that the employee had sustained a compensable injury and awarded permanent partial disability benefits. The Panel affirmed the trial court's judgment. The full text of the opinion may be viewed here: [http://www.tncourts.gov/sites/default/files/owsley\\_v\\_con-way\\_truckload.pdf](http://www.tncourts.gov/sites/default/files/owsley_v_con-way_truckload.pdf)

**SHEILA PASCHALL ex rel MURRAY PASCHALL et al. v. SGS NORTH AMERICA, INC. et al. No. M2012-00399-WC-R3-WC – Filed January 30, 2013.** A statute of limitations defense under Tenn. R. Civ. Pro 41.01(2) by an employer against a widow of an injured/deceased worker was granted by the trial court. The Panel reversed the judgment of the trial court finding the action timely filed under the one-year savings statute. The full text of the opinion may be viewed here:

[http://www.tncourts.gov/sites/default/files/paschall\\_v\\_sgs\\_opnjo.pdf](http://www.tncourts.gov/sites/default/files/paschall_v_sgs_opnjo.pdf)

**JEFFREY PATTERSON v. THYSSENKRUPP ELEVATOR COMPANY No. W2012-01619-WC-R3-WC – Filed June 10, 2013.** The employee claimed a ruptured cervical disk injury from work. The employer denied the claim asserting that it was caused or worsened by a

subsequent motor vehicle accident. The trial court found the injury compensable and awarded benefits. The Panel affirmed the trial court's judgment. The full text of the opinion may be viewed here: <http://www.tsc.state.tn.us/sites/default/files/pattersonopn.pdf>

**JACKIE PERRY v. LENNOX HEARTH PRODUCTS No. W2011-02389-SC-WCM-WC – Filed April 11, 2013.** The trial court found the employee's hearing loss compensable and awarded permanent partial disability benefits. The trial court's judgment was affirmed by the Panel. The full text of the opinion may be viewed here: <http://cases.laws.com/tennessee-jackie-perry-v-lennox-hearth-products.pdf>

**LATOSHA READ v. HILL SERVICES, INC. et al. No. W2012-00224-SC-WCM-WC – Filed January 10, 2013.** The trial court determined that a widow did not sustain her burden of proof that her husband's death was caused by his employment. The Panel affirmed the trial court's judgment. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/readlopn.pdf>

**JAMES REED v. CENTRAL TRANSPORT NORTH AMERICA, INC. No. E2012-00535-WC-R3-WC – Filed April 29, 2013.** The employee suffered a compensable back injury which recommended surgery did not relieve. The trial court awarded permanent partial disability benefits and the employer moved to set the judgment aside based on the employee's failure to supplement his discovery responses post-trial. The Panel affirmed the trial court's judgment. The full text of the opinion may be viewed here: [http://www.tncourts.gov/sites/default/files/reedj\\_opn.pdf](http://www.tncourts.gov/sites/default/files/reedj_opn.pdf)

**RODGERS V. GCA SERVICES GROUP, INC. AND WEAKLEY COUNTY No. W2012-01173-COA-R3-CV – Filed February 13, 2013.** An employee's exposure to mold contamination at the workplace ultimately resulted in her death and her heirs filed numerous common law tort claims. The trial court held that the exclusive remedy for the injury/death was pursuant to the workers' compensation law and the Panel affirmed. The full case text may be viewed here: [http://www.tba.org/sites/default/files/rodgersc\\_021313.pdf](http://www.tba.org/sites/default/files/rodgersc_021313.pdf)

**RANDALL S. ROGERS v. THYSSENKRUPP WAUPACA, INC. et al. No. E2012-00904-WC-R3-WC – Filed April 15, 2013.** Employee claimed a gradual work-related injury to his back. Employer denied compensability and also asserted failure to give timely notice. The trial court found the injury compensable, notice timely and awarded benefits. The Panel reversed the trial court as they found that the weight of the evidence did not support a gradual injury, and so dismissed employee's complaint. The full case text may be viewed here: <http://www.tncourts.gov/sites/default/files/rogersrswcopn.pdf>

**TINA SHANNON v. ROANE MEDICAL CENTER No. E2011-02649-WC-R3-WC – Filed March 13, 2013.** The trial court denied recovery to an “on-call” employee involved in a motor vehicle accident while driving home after having been called in, but still on call. The Panel reversed the trial court’s judgment indicating that the employee’s circumstances caused her to fall within the exception to the “coming and going rule”. The trial court’s denial of recovery was reversed and the case remanded for an award of benefits. The full text of the opinion may be viewed here: <http://cases.laws.com/tennessee-tina-shannon-v-roane-medical-center.pdf>

**JOSEPH SIMS v. MILLENNIUM PACKAGING SOLUTIONS, LLC No. E2011-02448-WC-R3-WC – Filed February 4, 2013.** A 2000 injury wasn’t heard for ten years and had disparate medical reports as to impairment ratings and the employee’s ability to return to work. The trial court awarded 369.98 weeks of temporary total and 240 weeks for permanent partial disability. The Panel reversed the trial court’s judgment in part by lowering the temporary total benefits to 160 weeks and affirmed the trial court’s judgment in part by allowing the 240 weeks for permanent partial benefits thereby limiting the award to the 400 week maximum. The full text may be viewed here: <http://www.tncourts.gov/sites/default/files/simsjosephopn.pdf>

**JOSEPH E. SMITH v. ELECTRIC RESEARCH & MANUFACTURING COOPERATIVE, INC. and ACE AMERICAN INSURANCE CO. No. W2012-00656-WC-R3-WC – Filed February 22, 2013.** The employee’s treating physician’s impairment rating was found to rebut the statutory presumption of accuracy afforded the MIR physician’s rating by clear and convincing evidence pursuant to T.C.A. §50-6-204(d)(5)(2008). The trial court’s judgment was affirmed by the Panel. The full text may be viewed here: <http://www.tncourts.gov/sites/default/files/smithjopn.pdf>

**ERIC SUTTON v. MCKINNEY DRILLING COMPANY, et al. No. W2012-00503-WC-R3-WC – Filed January 18, 2013.** The trial court awarded benefits with the one and one-half cap to an injured employee. The employer contended no benefits should have been awarded at all for pulmonary dysfunction. The trial court’s judgment was affirmed by the Panel. The full text may be viewed at: <http://www.tncourts.gov/sites/default/files/suttoneopn.pdf>

**STEPHEN TAYLOR v. AIRGAS MID-SOUTH, INC. et al. No. W2012-00621-WC-R3-WC – Filed February 26, 2013.** The trial court ordered the employer to pay for an unauthorized spinal fusion and the Panel reversed and remanded. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/taylorstephenopn.pdf>

**UNITED PARCEL SERVICE, INC. v. DINDY HANNAH No. M2012-00884-WC-R3-WC – Filed August 14, 2013.** The employer accepted an employee’s hip injury, but not alleged back injury from the same incident. The trial court found the back also to be compensable when it accepted the opinion of one medical expert over another. The Panel found the trial court’s

decision to be within its discretion and affirmed the judgment. The full text of the opinion may be viewed here: [http://www.tncourts.gov/sites/default/files/ups\\_v\\_hannah\\_opnjo.pdf](http://www.tncourts.gov/sites/default/files/ups_v_hannah_opnjo.pdf)

**JESSIE UPCHURCH v. GOODYEAR TIRE & RUBBER COMPANY No. W2012-01869-WC-R3-WC – Filed October 18, 2013.** The trial court's award of permanent partial disability to both ears was upheld and found to be timely filed pursuant to the one year statute of limitations in T.C.A. § 50-6-203(b). Since gradual injuries of this nature are difficult to pinpoint as to when the employee "knew of should have known", the trial court's ruling was given considerable deference and affirmed by the Panel. The full text of the opinion may be viewed here: <http://www.tncourts.gov/sites/default/files/upchurchjopn.pdf>

**LORA VAWTER v. VOLUNTEER MANAGEMENT DEVELOPMENT No. W2012-00471-SC-WCM-WC – Filed February 13, 2013.** The Panel upheld the trial court judgment awarding benefits to an employee due to aggravation of her pre-existing rheumatoid arthritis. The full text of the opinion may be viewed here:  
<http://www.tsc.state.tn.us/sites/default/files/vawterlopn.pdf>

**BILLY WARD v. DELL PRODUCTS, L.P. et al. No. M2011-01714-WC-R3-WC – Filed March 8, 2013.** The trial court held that if the work only increased symptoms of a pre-existing condition, that was not sufficient to establish a compensable injury. The Panel affirmed the judgment of the trial court. The full text of the opinion may be viewed here:  
<http://cases.laws.com/tennessee-billy-ward-v-dell-products-lp-et-al.pdf>

**JOE CHRISTOPHER WATSON v. THE PARENT COMPANY No. M2012-01147-WC-R3-WC – Filed May 8, 2013.** The trial court ordered the employer to pay for second surgery and the employer appealed. Panel found that the Court didn't have subject matter jurisdiction over the appeal since it was not from a final or "certified as final" order, so dismissed the appeal. The full text of the opinion may be viewed here:  
[http://www.tncourts.gov/sites/default/files/watson\\_v\\_parent\\_co\\_opn\\_jo.pdf](http://www.tncourts.gov/sites/default/files/watson_v_parent_co_opn_jo.pdf)

**ANTHONY W. WELCHER v. CENTRAL MUTUAL INSURANCE COMPANY No. M2012-00248-WC-R3-WC – Filed March 21, 2013.** The employee settled his compensable claim with a provision for future medical care. The employer requested an independent medical evaluation before it would pay for prescribed surgery from the authorized treating physician. Surgery was performed while the evaluation was pending and the employee later suffered a brain hemorrhage from said surgery. The trial court ordered the employer to pay for the prescribed surgery, but not the resulting hemorrhage which it determined to not be related to the work injury. The trial court also awarded employee a portion of his requested attorney's fees. The Panel upheld the trial court's judgment regarding the payment of specific medical treatment, but

remanded on the award of attorney's fees stating that the record was insufficient for them to review that portion of the decision. The full text of the opinion may be viewed here: [http://www.tsc.state.tn.us/sites/default/files/welcher-centralmutual\\_opn\\_jo.pdf](http://www.tsc.state.tn.us/sites/default/files/welcher-centralmutual_opn_jo.pdf)

**TIMOTHY L. WILSON v. MEMPHIS LIGHT, GAS & WATER DIVISION No. W2012-00889-SC-WCM-WC – Filed March 7, 2013.** All parties, including a third party tortfeasor, settled all claims in this matter at a joint mediation that resulted in the employee dismissing his workers' compensation case. Over a year later, the employee moved to vacate the dismissal contending that he had not so agreed. The employer moved to strike the employee's motion and the trial court granted employer's motion. The Panel upheld the trial court's judgment. The full text of the opinion may be viewed here: <http://cases.laws.com/tennessee-timothy-l-wilson-v-memphis-light-gas-amp-water-division.pdf>

**TONY WAYNE WILSON v. BILL JENNINGS, et al. No. E2012-01966-SC-R3-WC – Filed September 19, 2013.** After a previous remand to the trial court from the Panel and the acceptance of additional evidence, the trial court awarded permanent partial disability and future medical benefits to the employee. The trial court's second judgment granted those benefits, denied the employer's motion for sanctions, and denied employer's motion in limine to exclude certain medical evidence. 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/wilsonvjenningsopinandjudg.pdf>

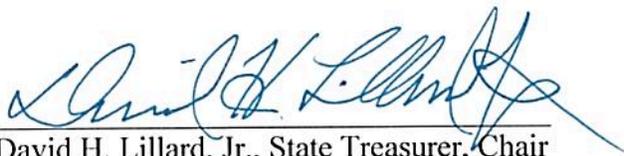
**RAYMOND DARRYL YOUNG v. BRIDGESTONE AMERICAS TIRE OPERATIONS, LLC. No. M2011-02551-WC-R3-WC – Filed January 10, 2013.** An injured employee who had a meaningful return to work was capped at one and one-half times the impairment rating in accordance with T.C.A. § 50-6-241(d)(1)(A) even though a new collective bargaining agreement reduced the hourly wages of all workers. The trial court's decision that the case was not ripe for reconsideration was affirmed by the Panel. The full text of the opinion may be viewed here: [http://www.tsc.state.tn.us/sites/default/files/young-bridgestone\\_opn\\_jo.pdf](http://www.tsc.state.tn.us/sites/default/files/young-bridgestone_opn_jo.pdf)

## CONCLUSION

Pursuant to T.C.A. § 50-6-121(g), the Advisory Council on Workers' Compensation respectfully submits this report on significant Supreme Court decisions for the 2013 Calendar Year. 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 108<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,

A handwritten signature in blue ink, appearing to read "David H. Lillard, Jr.", is written over a horizontal line. The signature is fluid and cursive.

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