IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
January 27, 2015 Session

ALFRED GAMBLE v. ABITIBIBOWATER, INC. ET AL.

Appeal from the Circuit Court for McMinn County
No. 2013cv144 Lawrence H. Puckett, Judge

No. E2014-00449-SC-R3-WC-MAILED-MARCH 30, 2015
FILED-APRIL 30, 2015

An employee sustained an injury to his knee while attempting to repair a piece of heavy machinery owned by his employer. Because of a staph infection, three separate surgical procedures were required. The knee gradually healed, leaving a thick and sensitive scar. An independent medical examiner, who testified on behalf of the employee at trial, found a permanent impairment of 7% to the lower extremity and added 5% based upon the disfigurement section of the AMA Guides. The orthopedic surgeon who performed the surgery found a permanent partial impairment of 7% to the lower extremity. A second orthopedist authorized by the employer assigned a permanent impairment of 2%. The trial court assigned a 7% permanent impairment to the lower extremity and also ruled that the employee did not have a meaningful return to work, thereby authorizing an award in excess of 1.5 times the medical impairment rating. In this appeal, the employee contends that he is entitled to an increase in the medical impairment rating from 7% to 12%. In response, the employer argues that the trial court erred by finding an impairment in excess of 2% and by ruling that the employee did not have a meaningful return to work. The appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law pursuant to Tennessee Supreme Court Rule 51. We affirm the judgment of the trial court.

Tenn. Code Ann. § 50-6-225(e) (2008 & Supp. 2013) Appeal as of Right; Judgment of the Trial Court Affirmed

GARY R. WADE, J., delivered the opinion of the Court, in which D. KELLY THOMAS JR., and THOMAS R. FRIERSON II, JJ., joined.

Harold E. Bishop, Maryville, Tennessee, for the appellant, Alfred Gamble.

Bridget J. Willhite and James F. Mitchell III, Athens, Tennessee, for the appellees, AbitibiBowater, Inc. and Travelers Indemnity Company; and Kathryn A. Baker, Nashville, Tennessee, for the appellee, the Second Injury Fund.

OPINION

I. Facts and Procedural History

Alfred Gamble (the "Employee") worked as a maintenance technician for AbitibiBowater, Inc. (the "Employer"), a pulp and paper manufacturing plant. The Employee's job consisted of installing, removing, and repairing heavy machinery and involved bending, squatting, kneeling, crawling, and climbing. On January 27, 2011, the Employee attempted to repair the "bottom anvil in the chipper." For a period of several hours, the Employee was required to be in a kneeling position, cutting and welding the anvil with a torch. The weather was cold and the surface on which he worked was concrete. By late afternoon, the Employee complained of bruised knees. By the next morning, he found it difficult to walk because of particular soreness in his left knee.

When he arrived at work on January 28, the Employee reported his condition to his supervisor who, in turn, referred him to the medical department. Angela Peterson, the nurse on duty, consulted with Dr. Elizabeth Daubner, the plant physician, and provided the Employee with a bag of ibuprofen. He was sent home with instructions to return if his condition had not improved by the following Monday. When the Employee continued to experience pain and his knee became swollen, he returned to the medical department as instructed and was referred to Dr. Daubner in Cleveland, Tennessee. Because the Employee was unable to walk back to his truck, Larry Vest, the Employer's Safety Director, provided the transportation. After taking an x-ray and examining the Employee, Dr. Daubner sent him to the local hospital and referred him to Dr. Daniel Johnson for treatment. Dr. Johnson, an orthopedic surgeon, performed surgery to drain infection from the Employee's prepatellar bursa. Two days later, after a culture indicated positive for methicillin-resistant Staphylococcus aureus ("MRSA"),[1] Dr. Johnson performed another surgical procedure. The Employee underwent a total of three surgical procedures over a nine-day period of hospitalization. Upon his release, the wound was left open and encased in a special type of dressing known as a "vac pac," which allowed the fluid to drain, thereby lessening the likelihood of reinfection and permitting the wound to heal from the inside out. By October 7, 2011, almost nine months after the injury, the surgical wound had healed, leaving a thick and sensitive scar—some fourteen centimeters in length and two centimeters in width.

[1] MRSA is a drug-resistant staph infection caused by toxic bacteria that typically affects the skin and central nervous system. MRSA causes the suppuration of wounds and other infections. Stedman's Medical Dictionary 1232, 1828 (28th ed. 2006).

When the Employee returned to the workplace, he delivered Dr. Johnson's records to Dr. Daubner. When Dr. Daubner asked if he was able to kneel or climb stairs, the Employee replied that he could not. After some discussion, the Employee and Dr. Daubner agreed to seek a second medical opinion to determine whether he could return to work without restrictions.

On January 9, 2012, the Employee was examined by Dr. William Hovis of Knoxville, who found that the Employee's MRSA infection had been cured. Because the Employee still had a sensitive and painful scar and the onset of early arthritis behind the kneecap, Dr. Hovis recommended a home exercise program and suggested a restriction against repetitive squatting or kneeling for four to six months.[2] Dr. Hovis hoped that by giving the scar tissue additional time to heal, the Employee might have a decrease in symptoms. When the Employee returned to Dr. Hovis several months later, his symptoms were unchanged. Dr. Hovis found crepitation, hypertrophic scarring, and quadricep atrophy, but otherwise believed that the Employee had a normal range of motion in his left leg. He released the Employee without any restrictions on his activities, explaining that he hoped that normal, active use of the leg would gradually diminish the Employee's muscle atrophy and other symptoms, but he further opined that the Employee should avoid repetitive squatting and kneeling for an additional period of time.

A benefit review report dated April 12, 2013, indicated an impasse in the resolution of the workers' compensation claim. Seventeen days later, the Employee filed suit, seeking benefits for permanent and total disability. The Employer admitted that the Employee had sustained a job-related injury to his left knee but denied the disabling nature of his injury and questioned his claim of no meaningful return to work.

At trial, the Employee, then fifty-eight years old, testified that he had worked for the Employer from 1974 until 2011. He received a high-school diploma, attended college for a short period of time, and worked as a logger for three years before accepting employment with the Employer. During his tenure with the Employer, he began by unloading trucks and debarking wood. After three years, he was transferred to the paper mill where he spent another four years as a "hand on the paper machine." Afterwards, he was transferred to the buildings and grounds department where he drove a dump truck. Eventually, he was accepted into the millwright apprenticeship program. After a period of years as a millwright, he "went into a . . . kind of flex-craft type deal," and in 2002, he became a full multi-craft maintenance technician. In his last job, he worked on belts, conveyors, gear boxes, pumps, paper mills, roll changes, press roll changes, and calendar stack changes, performing all

[2] Six weeks later, the Employee applied for Social Security disability benefits, explaining that he "wasn't getting any better."

necessary repairs. In the course of his duties, the Employee was often required to work on his back—kneeling, standing, crawling, and squatting, and "just about any [other] shape you could get in." He testified that "everything we work on is really big . . . the parts are heavy," and stated that he typically performed his work on steel, concrete, catwalks, and grading areas. His job included the regular use of steps, stairs, and ladders, sometimes climbing ladders as high as seventy-five feet while carrying tool bags weighing between twenty-five and fifty pounds.

The Employee recalled that his injury occurred while he was attempting to weld a bottom anvil, "which is a large chunk of steel," back into a large piece of machinery called the "south chipper." He estimated that he worked between four and six hours in extremely cold January weather while making the necessary repairs. On the following day, when he found that he could hardly walk because of the pain in his knees, he reported his injury to the supervisor and eventually underwent an extended period of treatment. During his rehabilitation and treatment he had a leg brace and used a walker, but because he wanted to return to work, he periodically asked Dr. Johnson for permission to return to his duties—explaining that the policy of the Employer would not allow him to return until he had no restrictions. According to the Employee, on his last visit with Dr. Johnson, he persuaded Dr. Johnson not to place restrictions on his return-to-work slip "so that [he] . . . could get back to work." He testified that he was then examined by Dr. Daubner who, after concluding that the injury prevented him from going up and down the stairs or kneeling on his leg, would not grant permission for him to return. Since that time, the Employee continued to undergo therapy, performing leg lifts and other exercises and riding a stationary bicycle. Because his symptoms have persisted, he believed that he could no longer perform the kind of activities required by his job. In particular, he complained about numbness in the scar, which, he said, tended to dry and crack unless regularly moisturized. The Employee also stated that he had no feeling in portions of his leg, he was unable to kneel, and he took Aleve for the arthritis in his leg. He testified that his household activities were limited and that he was unable to participate in any form of recreation.

Jim Brigham, the Human Resources Director for the Employer, described the Employee as "a very good employee[and a] very hard worker." He stated that he and the Employee, who was the union president at the time of his injury, had a "good relationship." He described the Employer's return-to-work policy as follows: "We will allow employees with on-the-job or off-the-job injuries or illnesses an opportunity to work light duty up to sixty days if there's meaningful work, if the restrictions are appropriate for the work that we have to offer." Brigham stated that the Employee could have returned to work only if there were "no restrictions." He acknowledged that the Employer's records included a statement by Dr. Daubner in June of 2011, well before the wound had healed, "indicating [that the Employee was] totally disabled from performing his previous occupation." Brigham also

confirmed that Dr. Daubner had never cleared the Employee to return to work and conceded that if the Employee "cannot kneel . . . and that restriction is permanent, [the Employer] would not have work for him."

At the request of the Employee, Dr. William Kennedy, an orthopedic surgeon, performed an independent medical evaluation some eighteen months after the surgery. After reviewing the medical records and conducting a three-hour examination, Dr. Kennedy found only a minimal loss of range of motion in the left knee, but assessed a 7% permanent medical impairment for the lack of flexion, arthritic change, and damage to the weight-bearing function of the knee. He assigned an additional 5% impairment, based upon Table 8-2 of the AMA Guides, for the surgical scarring, which he believed would continue to require treatment with over-the-counter medication. In Dr. Kennedy's opinion, the Employee's scar required protection from extreme temperatures, caustic materials, direct sunlight, and glancing blows. On cross-examination, however, Dr. Kennedy conceded that, unlike the circumstances related to the Employee, the various examples of impairment listed in relation to Table 8-2 are skin disorders such as burns or diseases requiring prescription medication.

At the conclusion of the evidence, the trial court reserved its final ruling but observed that the Employee had not had a meaningful return to work, holding that the Employer had declined to accommodate work restrictions under these circumstances and that the workplace injury had caused too much pain for the Employee to return to his previous duties. The trial court specifically accredited the Employee's testimony that he was motivated to return to work if possible, and that he made regular reports of his lack of progress to the Employer's nurse and to Dr. Daubner. The trial court quoted portions of Dr. Johnson's deposition, who testified that although the prepatellar bursitis had cleared, the Employee still has "a sensitive hypertrophic scar and some loss of strength," and "the articular cartilage behind the kneecap is worn down and fissured[,] . . . caus[ing] swelling[and] . . . the grinding sensation . . . when . . . squat[ting] down or climb[ing] stairs." The trial court cited with approval Dr. Johnson's finding of a 7% medical impairment to the lower extremity, calculated by "a 3% to the patellar femoral changes, . . . 2% . . . to the lower extremity, [and] 2% for the medial meniscus degenerative changes." After reviewing the depositions of Dr. Johnson and Dr. Hovis, the trial court concluded that "kneeling on that knee is something [the Employee] shouldn't be doing." The trial court was complimentary of the medical history of the Employee taken by Dr. Kennedy and accredited his statement that the work injury "permanently aggravated and advanced . . . mild osteoarthritis that previously existed in [the Employee's] left knee"; however, the trial court did not add a 5% medical impairment for the scar, as sought by the Employee.

In its written order, entered eleven days after the trial, the trial court assessed a 7% impairment to the lower extremity, holding that the limitations on the Employee's "ability

to squat and kneel" were permanent, "restrict[ing] him from returning to his former job" and "affect[ing] his ability to work in other types of employment that might be available to him in his disabled condition." Because the Employee did not have a meaningful return to work, the trial court applied a multiplier of four in order to determine the vocational disability based upon "all pertinent factors," including the Employee's positive qualities—his intelligence and impressive work record—but also considering his "age, education, skills and training, local job opportunities, and capacity to work at types of employment available in [his] disabled condition." Tenn. Code Ann. § 50-6-241(c) (2008 & Supp. 2013). The trial court assessed a 28% vocational disability, for a total of $42,840, based upon the Employee's compensation rate of $765 per week for 200 weeks.

In this appeal, the Employee claims that the trial court should have granted an additional 5% impairment for the surgical scar, as Dr. Kennedy testified, for a 12% medical impairment rating. The Employer also appeals, claiming that the trial court should have awarded only a 2% impairment, as assessed by Dr. Hovis, and arguing further that the trial court erred by finding that the Employee was denied a meaningful return to work.

II. Standard of Review

A trial court's findings of fact in a workers' compensation case are reviewed de novo, accompanied by a presumption of correctness, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2008 & Supp. 2013); see also Tenn. R. App. P. 13(d). "'This standard of review requires us to examine, in depth, a trial court's factual findings and conclusions.'" Williamson v. Baptist Hosp. of Cocke Cnty., Inc., 361 S.W.3d 483, 487 (Tenn. 2012) (quoting Galloway v. Memphis Drum Serv., 822 S.W.2d 584, 586 (Tenn. 1991)). When the trial court has seen and heard the witnesses, considerable deference must be afforded to the trial court's findings of credibility and the weight that it assessed to those witnesses' testimony. Tryon v. Saturn Corp., 254 S.W.3d 321, 327 (Tenn. 2008) (citing Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002)).

"When the issues involve expert medical testimony that is contained in the record by deposition, determination of the weight and credibility of the evidence necessarily must be drawn from the contents of the depositions, and the reviewing court may draw its own conclusions with regard to those issues." Foreman v. Automatic Sys., Inc., 272 S.W.3d 560, 571 (Tenn. 2008) (citing Orrick v. Bestway Trucking, Inc., 184 S.W.3d 211, 216 (Tenn. 2006)). In this regard, we may make our own assessment of the evidence to determine where the preponderance of the evidence lies. Crew v. First Source Furniture Grp., 259 S.W.3d 656, 665 (Tenn. 2008); Wilhelm v. Krogers, 235 S.W.3d 122, 127 (Tenn. 2007). Further, on questions of law, our standard of review is de novo with no presumption of correctness. Wilhelm, 235 S.W.3d at 126 (citing Perrin v. Gaylord Entm't Co., 120 S.W.3d 823, 826 (Tenn. 2003)).

III. Analysis

A. Causation

Initially, in order to qualify for workers' compensation benefits, an injury must both "arise out of" and occur "in the course of" employment:

> The phrase "in the course of" refers to time, place, and circumstances, and "arising out of" refers to cause or origin. "[A]n injury by accident to an employee is in the course of employment if it occurred while he was performing a duty he was employed to do; and it is an injury arising out of employment if caused by a hazard incident to such employment." Generally, an injury arises out of and is in the course and scope of employment if it has a rational connection to the work and occurs while the employee is engaged in the duties of his employment.

Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676 (Tenn. 1991) (alteration in original) (citations omitted). That the Employee's knee injury arose out of and in the course of his employment is not in dispute.

B. Medical Impairment

The Employee contends that the trial court should have granted an additional 5% medical impairment over the 7% award because of the sensitive and permanent nature of the surgical scar. In response, the Employer argues that the trial court's finding of a 7% medical impairment is excessive.

At the time of the Employee's claim, Tennessee Code Annotated section 50-6-204(d)(3), which sets forth a standard for the assessment of anatomical impairment and guidelines for the assessment of benefits, provided as follows:

> (A) To provide uniformity and fairness for all parties in determining the degree of anatomical impairment sustained by the employee, a physician, chiropractor or medical practitioner who is permitted to give expert testimony in a Tennessee court of law and who has provided medical treatment to an employee or who has examined or evaluated an employee seeking workers' compensation benefits shall utilize the applicable edition of the AMA Guides as established in § 50-6-102 or, in cases not covered by the AMA Guides, an impairment rating by any appropriate method used and accepted by the medical community.
>
> (B) No anatomical impairment or impairment rating, whether contained in a medical record, medical report, including a medical report pursuant to §

> 50-6-235(c), deposition or oral expert opinion testimony shall be accepted during a benefit review conference or be admissible into evidence at the trial of a workers' compensation matter unless the impairment is based on the applicable edition of the AMA Guides or, in cases not covered by the AMA Guides, an impairment rating by any appropriate method used and accepted by the medical community.

Tenn. Code Ann. § 50-6-204(d)(3)(A)–(B) (2008).

While the interpretation of the AMA Guides as to anatomical impairment is the job of medical experts, the trial court generally has the discretion to choose which expert to accredit when there is a conflict of expert opinions. Kellerman v. Food Lion, Inc., 929 S.W.2d 333, 335 (Tenn. 1996); see Act-O-Lane Gas Serv. Co. v. Clinton, 245 S.W.2d 795, 799 (Tenn. Ct. App. 1951) (recognizing that the trier of fact makes the ultimate credibility determination when there are conflicts in the medical proof). In Kellerman, our supreme court made the following observation:

> When the medical testimony differs, the trial judge must obviously choose which to believe. In doing so, he [or she] is allowed, among other things, to consider the qualifications of the experts, the circumstances of their examination, the information available to them, and the evaluation of the importance of that information by the expert.

929 S.W.2d at 335. Moreover, testimony by a lay witness may influence the trier of fact in the consideration of expert medical proof by depositions. See Thomas v. Aetna Life & Cas. Co., 812 S.W.2d 278, 283 (Tenn. 1991); see also Act-O-Lane Gas Serv., 245 S.W.2d at 795.

Dr. Kennedy, as pointed out by the trial judge, did provide an impressive account of the Employee's medical history and, after conducting his extensive examination, basically agreed with the opinion of Dr. Johnson except for whether the scar added 5% to the 7% impairment in the left leg. Dr. Johnson, as the treating physician, made reference to the AMA Guides and found a 7% impairment, which he believed included any impairment related to the scar. Dr. Johnson opined that an additional impairment rating for the scar would be redundant because the language in the AMA Guides relating to separate skin impairments did not apply to the Employee's injury: "When impairment resulting from a burn or scar is based on peripheral nerve dysfunction or loss of range of motion, evaluate the skin impairment separately and combine the impairment rating with that from Chapter 15, The Upper Extremities; or Chapter 16, The Lower Extremities." Dr. Kennedy, however, testified to an additional 5% impairment for the scar based on his interpretation of the tables in the AMA Guides. Dr. Hovis, who saw the Employee only twice, testified that the Employee

might make a better recovery given time and effort, but that he still suffered limitations when last examined. His opinion that the Employee would have only a 2% impairment was not persuasive. The trial court considered the differing medical issues, interpreted the AMA Guides, and, based on the entirety of the evidence, including the lay testimony, found only a 7% impairment. The trial court specifically relied upon Dr. Johnson's testimony that a separate impairment rating for the surgical scar was not warranted, and carefully set out the reasons for doing so. Under these circumstances, we cannot say that the evidence preponderates against the 7% medical impairment to the left lower extremity.

The extent of vocational disability is likewise a question of fact, Johnson v. Lojac Materials, 100 S.W.3d 201, 202 (Tenn. 2001), and so the trial court's decision must be upheld unless the evidence preponderates otherwise, Tenn. Code Ann. § 50-6-225(e)(2). In the assessment of vocational disability, trial courts may consider, in addition to an anatomical impairment rating, the employee's skills and training, education, age, local job opportunities, capacity to work, and the kinds of employment available under any physical limitations. Worthington v. Modine Mfg. Co., 798 S.W.2d 232, 234 (Tenn. 1990). The trial court is not required to accept physicians' opinions as to the extent of the employee's impairment level, but must consider all of the evidence, including lay testimony, to decide the extent of vocational disability. Hinson v. Wal-Mart Stores, Inc., 654 S.W.2d 675, 677 (Tenn. 1983). In particular, the testimony of the employee as to his or her limitations must always be taken into consideration. Uptain Constr. Co. v. McClain, 526 S.W.2d 458, 459 (Tenn. 1975).

After reviewing the contents of the record, we are unable to conclude that it preponderates against either the finding of an anatomical impairment of 7% or the award of 28%, using a multiplier of four, for the vocational disability related to the Employee's left leg.

C. Meaningful Return to Work

The Employer contends that the trial court erred by finding that the Employee did not have a meaningful return to work and further asserts, therefore, that the Employee's benefits should have been limited to one and one-half times the anatomical impairment rating, rather than a multiplier of four. Tenn. Code Ann. § 50-6-241(d)(1)(A), (2)(A). In support of this contention, the Employer relies upon the testimony of Drs. Johnson and Hovis, each of whom conditionally released the Employee without formal work restrictions, and its claim that the Employee made no effort to "contact his supervisors or managers . . . to determine if he could return to work in a modified position until it could be determined whether he could return to full duty."

In considering this argument, we note that all of the testimony indicated that the Employee's job was particularly demanding—requiring a substantial amount of kneeling,

crawling, and climbing. Dr. Johnson testified repeatedly that he thought the Employee could not perform those activities or could do so only in a very limited fashion. Likewise, Dr. Kennedy concluded that the Employee would be unable to resume his former job responsibilities. Although Dr. Hovis opined that the Employee's condition would eventually improve, he also suggested that continued restrictions were appropriate at the time of the Employee's last examination.

When an injured employee is not returned to work by the employer at a wage equal to or greater than his or her pre-injury wage, the employee may receive permanent partial disability benefits up to six times the medical impairment rating. Tenn. Code Ann. § 50-6-241(d)(2)(A). It is only "[w]hen the employee has made a 'meaningful return to work,' [that] the lower cap of one-and-one-half times the impairment rating applies." Williamson, 361 S.W.3d at 488 (citing Nichols v. Jack Cooper Transp. Co., 318 S.W.3d 354, 361 (Tenn. 2010)). "[T]he burden is upon the employer to show, by a preponderance of the evidence, that an offer of a return to work is [made] at a wage equal to or greater than the pre-injury employment and that the work is within the medical restrictions . . . for the returning employee." Ogren v. Housecall Health Care, Inc., 101 S.W.3d 55, 57 (Tenn. Workers' Comp. Panel 1998). The touchstone of the meaningful-return-to-work analysis is "reasonableness," Tryon, 254 S.W.3d at 328, and the determination of whether an employee has had a meaningful return to work is "highly fact-intensive and 'depends on the facts of each case,'" Howell v. Nissan N. Am., Inc., 346 S.W.3d 467, 472 (Tenn. 2011) (quoting Tryon, 254 S.W.3d at 328). Three factors guide this analysis: (1) whether the injury rendered the employee unable to perform the job; (2) whether the employer declined to accommodate work restrictions "arising from" the injury; and (3) whether the injury caused too much pain to permit the continuation of the work. Tryon, 254 S.W.3d at 329.

Here, the Employee testified that he was no longer able to kneel, squat, or crawl. The record demonstrates that his former job responsibilities required all of that and more. The most compelling testimony concerning the Employee's ability to return to work was given by Jim Brigham, the Employer's Human Resources Director, who stated unequivocally that Dr. Daubner's approval was required before any employee would be permitted to return to work from an injury. Brigham also agreed that Dr. Daubner had never approved the Employee to return. Indeed, Dr. Daubner's skepticism concerning the Employee's ability to return to work after being released by Dr. Johnson resulted in the referral to Dr. Hovis, who placed the Employee under an additional six months of restrictions. Each of the factors set out in Tryon favors the Employee. Taking all of this information into consideration, we hold that the evidence does not preponderate against the trial court's finding that the Employee did not have a meaningful return to work.

IV. Conclusion

The judgment of the trial court is affirmed. Costs are taxed one-half to Alfred Gamble and his surety and one-half to AbitibiBowater, Inc. a/k/a Bowater Newsprint n/k/a Resolute FP US, Inc. and Travelers Indemnity Company, for which execution may issue if necessary.

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GARY R. WADE, JUSTICE

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JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs on appeal are taxed one-half to Alfred Gamble and his surety and one-half to AbitibiBowater, Inc. a/k/a Bowater Newsprint n/k/a Resolute FP US, Inc. and Travelers Indemnity Company, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM