

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON

<p>FLORINE VANDYKE</p> <p style="padding-left: 40px;">Plaintiff/Appellee,</p> <p style="padding-left: 40px;">vs.</p> <p>PLUMLEY RUBBER COMPANY and LIBERTY MUTUAL INSURANCE CO.,</p> <p style="padding-left: 40px;">Defendants/Appellants.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>HENRY CIRCUIT</p> <p>Hon. C. Creed McGinley, Circuit Judge</p> <p>NO. 02S01-9604-CV-00039</p>
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C e c i l C r o w s o n , J r .
A p p e l l a t e C o u r t C l e r k

<u>For Appellants:</u>	<u>For Appellee:</u>
<p>Catherine B. Clayton Spragins, Barnett, Cobb & Butler Jackson, Tennessee</p>	<p>Ricky L. Boren Hill Boren Jackson, Tennessee</p>

MEMORANDUM OPINION

Mailed:

Members of Panel:

Justice Lyle Reid

Special Judge Joe C. Loser, Jr.

Special Judge Billy Joe White

REVERSED AND REMANDED

White, Judge

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated section 50-6-225 (e)(3) for hearing and reporting of findings of fact and conclusions of law. In this appeal, the employer, Plumley Rubber Company and the insurance carrier, Liberty Mutual, contend the trial court erred in granting judgment for medical expenses to the employee after they had been paid by the employee's health plan. The panel agrees and reverses the judgment of the trial court.

It was stipulated that the employee's total medical expenses totaled \$22,278.55. It was further stipulated that the Plaintiff had paid prior to trial \$669.29 in out-of-pocket medical expenses. Her remaining medical expenses were paid by Plumley through its group health care plan. The insurance company paid the remainder.

The parties further stipulated that Plumley's group health insurance plan did not contain a specific set-off clause for workers' compensation benefits. Plumley is self-insured for group health benefits.

This panel holds that under T.C.A. § 50-6-204 that the employer is responsible for payment of medical expenses and that the employee is not entitled to a judgment against the employer for medical bills which have already been paid.

This panel holds that this case is controlled by *Bituminous Casualty Corp. v. Smith*, 288 S.W.2d, 913, 916 (Tenn. 1956).

The judgment of the trial court is reversed and remanded for appropriate action under this decision. The costs are taxed to the Plaintiff/Appellee.

Billy Joe White, Special Judge

CONCUR:

Lyle Reid, Justice

Joe C. Loser, Jr., Special Judge