

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
February 25, 2008 Session

**STATE OF TENNESSEE EX REL. FLOWERS/NEWMAN v. TENNESSEE
TRUCKING ASSOCIATION SELF INSURANCE GROUP TRUST ET AL.**

In re: T.L. GREEN v. WESTERN EXPRESS, INCORPORATED

**Direct Appeal from the Chancery Court for Davidson County
No. 04-245-III Ellen Hobbs Lyle, Chancellor**

**No. M2006-02242-WC-R3-WC - Mailed - April 10, 2008
Filed - June 20, 2008**

This action for workers' compensation benefits 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) (Supp. 2007) for a hearing and report of findings of fact and conclusions of law. The claimant seeks workers' compensation benefits for the death of his wife, a long distance truck driver, who died after leaping from the cabin of her tractor trailer on a mountainous stretch of highway. Her employer's workers' compensation insurance carrier is in liquidation. As part of the liquidation process, the chancery court assigned the claim to a referee for a report of findings of fact and conclusions of law. The referee concluded that the wife's death did not arise out of her employment. The chancery court affirmed the denial of benefits, but on the grounds that the Liquidator had established that the wife's death was due to willful misconduct. The claimant appeals. This appeal presents two issues: 1) whether the claimant's tardiness in filing objections to the referee's findings of fact and conclusions of law was due to excusable neglect, and 2) whether the chancery court erred in holding that the Liquidator met its burden of proof for establishing the willful misconduct defense. Upon review, we hold that the claimant's late filing was due to excusable neglect. In addition, we hold that the Liquidator failed to establish that the wife's death was due to willful misconduct. Accordingly, we reverse the chancery court's holding on both issues and remand for a new hearing.

**Tenn. Code Ann. § 50-6-225(e)(3) (Supp. 2007) Appeal as of Right; Judgment of the
Chancery Court Reversed**

WILLIAM M. BARKER, C.J., delivered the opinion of the court, in which DONALD P. HARRIS, SR. J., and JERRY SCOTT, SR. J., joined.

Ricky L. Boren, Jackson, Tennessee, for the appellant, T.L. Green.

Renard A. Hirsch, Sr., Nashville, Tennessee for the appellee, State of Tennessee.

MEMORANDUM OPINION

I. PROCEDURAL AND FACTUAL BACKGROUND

From September 15, 2003, until her death in the early morning hours of October 8, 2003, Mamie Green was employed as a long distance truck driver for Western Express, Inc., a Nashville-based trucking company.¹ The parties do not dispute that Ms. Green died after jumping from the cabin of her tractor trailer while it was traveling down a mountainous stretch of highway near Denver, Colorado. In addition, the parties do not disagree that during her eighteen-year career hauling freight, Ms. Green had become an experienced truck driver and had acquired skills in driving through mountainous terrain. However, the controversy surrounding this claim for workers' compensation benefits revolves around whether Ms. Green apparently leapt from the cabin of her tractor trailer due to an emergency caused by faulty brakes or whether she leapt in order to take her own life.

Before examining the facts of the case at bar, it is necessary to detail the procedural history of this case and how it came before this Panel. Western Express, Inc. was self-insured through the Tennessee Trucking Association Self Insurance Group Trust ("Trust") pursuant to Tennessee Code Annotated section 50-6-405(c)(1) (Supp. 1998)² and the rules of the Department of Commerce and Insurance found at Tennessee Compilation of Rules and Regulations Chapter 0780-1-54 (1998).³ On January 26, 2004, the Commissioner of Commerce and Insurance ("Commissioner" or "Liquidator") petitioned the Davidson County Chancery Court pursuant to the Insurers Rehabilitation and Liquidation Act ("Act"), codified at Tennessee Code Annotated sections 56-9-101 to -133 (2000), seeking an appointment as statutory receiver for liquidation of the Trust.⁴ See Tenn.

¹ Western Express, Inc. had previously employed Ms. Green as a driver from September 13, 2002, through March 3, 2003.

² This statute provides that "Ten (10) or more employers of the same trade or professional association may enter into agreements to pool their liabilities under this chapter for the purpose of qualifying as self-insurers" Tenn. Code Ann. § 50-6-405(c)(1) (Supp. 1998) (current version at Tenn. Code Ann. § 50-6-405(c)(1) (Supp. 2007)).

³ The purpose of these rules and regulations is "to regulate employers that choose to pool their workers compensation liabilities pursuant to T.C.A. § 50-6-405(c)." Tenn. Comp. R. & Regs. 0780-1-54-.01 (1998), repealed and replaced by, Tenn. Comp. R. & Regs. 0780-1-54-.01 (2005).

⁴ For a discussion of the Trust's history and its subsequent liquidation by the Commissioner, see State ex rel. Flowers v. Tennessee Trucking Ass'n Self Ins. Group Trust, 209 S.W.3d 595, 596-98 (Tenn. Ct. App. 2006) and (continued...)

Code Ann. § 56-9-306 (2000). The chancery court granted the petition and ordered that the Commissioner continue to make payments of temporary total disability benefits and ongoing medical payments to or on behalf of injured employees of the Trust members after taking over management of the Trust.

T.L. Green (“Husband”), Ms. Green’s husband, filed a claim for workers’ compensation benefits with the Liquidator. The Liquidator denied the claim and the Husband timely objected to the denial and brought suit in the Davidson County Chancery Court against the Liquidator. The chancery court assigned the case to a referee for a hearing and a report of findings of fact and conclusions of law.

The referee held a hearing on May 25, 2006, where he heard in-person testimony from the Husband and Clarence Easterday, Jr., Executive Vice-President of Western Express, Inc., and received deposition testimony from Joel Stephens, a truck driver who spoke with Ms. Green shortly before she died, and Jerry Williams (“Trooper Williams”), a trooper assigned to the motor carrier safety section of the Colorado State Patrol who investigated the crash. In addition, the parties introduced several exhibits, including repair receipts, daily driver logs, and a coroner’s report.

The record shows that on October 5, 2003, Western Express, Inc. assigned Ms. Green her final trip, which required her to drive her eighteen-wheel tractor trailer through parts of Texas and Colorado. As part of her job duties, Ms. Green was required to maintain daily logs of her travel times and the condition of her truck. The daily logs from October 3 through 8, 2003, were admitted into evidence. The daily log includes a section titled the “Driver’s Vehicle Inspection Report” where the driver must report any defects or deficiencies that would likely affect the safety of the driver or the operation of the truck. Ms. Green’s daily logs from October 5th, 7th, and 8th indicate that Ms. Green did not find any defects or deficiencies in her truck. Moreover, Ms. Green omitted this portion of the daily log on October 6th.

Even though Ms. Green’s daily logs do not reflect any problems with her truck, other evidence in the record clearly establishes that Ms. Green was experiencing problems with her brakes during the trip. According to a receipt from October 6th, Ms. Green stopped in Denton, Texas, at Truck Stops of America due to brake problems. The receipt indicates that the brakes were adjusted and that there was a loose “breather hose” and an “air leak.” The next morning, October 7th, Ms. Green continued her trip and informed her supervisor, via her on-board computer, that her tractor trailer had been in the shop the previous day “to find out where it was leaking at.” She went on to state that “my brakes are still squealing real bad.” Later that afternoon, Ms. Green sent another message to her supervisor stating that “after I make this delivery this trk [sic] has got to go back in the shop my front brakes are bad.”

⁴ (...continued)

State ex rel. Flowers v. Tennessee Trucking Ass’n Self Ins. Group Trust, 206 S.W.3d 602, 608-610 (Tenn. Ct. App. 2006).

According to Ms. Green's daily logs, she arrived in the Denver area at approximately 5:00 pm on October 7th, and remained there until approximately 4:15 am the following morning. Upon arriving in the area, Ms. Green stopped at another Truck Stops of America in Commerce City, Colorado, which is a suburb of Denver, because of problems with her brakes. A receipt from this stop was admitted into evidence. This receipt shows that Ms. Green requested that the technicians check all the truck's brakes and air pressure. After completing the requested work, the technician noted on the receipt that all of the brakes were checked and adjusted. Moreover, the technician "blew out" all of the truck's brake drums to remove any brake dust and that this removed "the squeal [sic] of the brakes." Lastly, the receipt establishes that the technician discovered an air leak and that there was a loose fitting on top of the "tranny," which was tightened.

While waiting for the technicians to finish the repairs to her truck, Ms. Green spoke with a fellow truck driver, Joel C. Stephens. Over the Liquidator's objections based on hearsay, Mr. Stephens testified by deposition that Ms. Green informed him of her problems with the "air system." Mr. Stephens explained that the "air system" referred to the truck's brakes and when that system does not build air pressure correctly, the truck's brake system does not function properly. Furthermore, Mr. Stephens testified that, based on his observations, Ms. Green was acting "upbeat and bubbly" during their conversation, which lasted approximately one to one and one-half hours. Mr. Stephens went on to state that Ms. Green left the truck stop before he did. Approximately three hours later, Mr. Stephens came upon the accident scene and observed Ms. Green's body in the roadway. Moreover, he described the stretch of road as a downgrade and observed that her body was about one-half of a mile past a runaway truck ramp.

Ms. Green's husband, who is also a truck driver, testified at the hearing. He stated that he spoke on his cellular telephone with Ms. Green on numerous occasions throughout her trip. The Husband recalled that during their last conversation, which occurred shortly before Ms. Green's death, she did not mention any problems with her brakes. Furthermore, the Husband related that his wife never spoke of being depressed or unhappy, and that there was "no way" she would try to kill herself.

In addition to hearing from the Husband, the referee heard from Clarence Easterday, Jr. Mr. Easterday testified that one of his responsibilities with Western Express, Inc. is to supervise claims for workers' compensation benefits. The referee permitted certain portions of the Colorado State Patrol's accident investigation report to be admitted into evidence via Mr. Easterday. The admitted portions of the report provide a diagram of the area where Ms. Green died. According to the diagram, the tractor trailer continued down the highway after Ms. Green leapt from it. It veered to the right of the roadway and collided with a concrete barrier. The tractor trailer slid along the barrier until it impacted a dirt berm. It continued over the dirt berm and crashed into the side of the mountain. The report also reveals that Ms. Green drove past two runaway truck ramps before leaping from the cabin of her tractor trailer.

In addition to admitting the accident investigation report, the referee permitted the coroner's investigative report into evidence, which summarizes the accident as follows:

Investigation reveals that on 10/8/03 at approximately 04:45hrs, this 41 year old black female was driving westbound in a semi-truck on I-70 in the right travel lane on a 6% down grade. The truck traveled through a right hand curve, and into a straight away when for an unknown reason the decedent jumped from the cab impacting the roadway and traveling about 50 feet before coming to rest in the center lane. The truck continued to travel westbound colliding with a concrete barrier and impacting the north side of the mountain.

Lastly, the referee admitted into evidence the deposition of Trooper Williams, who is a technician with the motor safety section of the Colorado State Patrol and is responsible for conducting post-crash investigations. According to his deposition, Trooper Williams conducted a “walk around” inspection of the truck upon arriving at the accident scene. He estimated that the accident occurred between two and four miles from the bottom of the mountain. With respect to the truck, he observed that it had suffered “heavy damage to the front end, driver’s side, and undercarriage” after crashing into the side of the mountain. In addition, “the trailer had moderate damage to the front, driver’s side.”

After completing his “walk around” inspection, Trooper Williams ordered the wreckage towed to a nearby service station where he could conduct a more thorough examination of the truck’s mechanical functions. With respect to the brakes, he testified that he generally tests brakes by supplying air to the brake canisters. However, due to the extensive damage to the front of Ms. Green’s tractor trailer, Trooper Williams was unable to test the front brakes to determine if they were receiving air properly. Furthermore, Trooper Williams testified that the size of an air leak in the brake lines determines the severity of any problems braking. Specifically, he stated that if the leak were to large for the air compressor to maintain pressure, then the truck must be taken out of service; whereas, if the air leak were small, then the truck’s brakes may not be adversely affected.

Even though Trooper Williams was unable to apply air pressure to the truck’s front brakes, he was able to visually inspect all of the tractor trailer’s brakes and concluded that all of the brake pads, including the brake pads on the trailer, were an acceptable thickness. Moreover, he observed “there [were] signs that the brakes had been hot, not severely hot, . . . but there was like some black soot” on the truck brakes. His investigation of the trailer brakes revealed that those brakes had been hotter than the truck brakes. Trooper Williams opined that “[w]hen you get the hot brakes you get a little bit of a brake fade.”

After considering the proof introduced by the parties, the referee issued his report and recommendations on July 12, 2006, finding that the Husband failed to establish a prima facie case that Ms. Green’s death arose out of her employment with Western Express, Inc. On August 1, 2006, the Husband filed objections to the referee’s findings of fact and conclusions of law with the Davidson County Chancery Court. The Liquidator countered that the Husband’s objections were

untimely filed and that the referee's holding was correct. The Husband replied that his objections were untimely filed due to excusable neglect.⁵

On September 27, 2006, the Chancellor entered her opinion dismissing the Husband's excusable neglect defense and concluding that his objections were not timely filed. However, the Chancellor addressed the merits of his objections. The Chancellor held that while Ms. Green's death occurred in the course of and arose out of her employment compensation should nevertheless be denied because the Liquidator had established that Ms. Green's death was caused by her own willful misconduct. Therefore, the Chancellor denied the Husband's claim for workers' compensation benefits. The Husband appealed.

II. Analysis

A. Standard of Review

The standard of review of factual issues in a workers' compensation case is de novo upon the record of the trial court, accompanied by a presumption of correctness of the trial court's findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (Supp. 2007); see also Rhodes v. Capital City Ins. Co., 154 S.W.3d 43, 46 (Tenn. 2004); Perrin v. Gaylord Entm't Co., 120 S.W.3d 823, 825 (Tenn. 2003). Conclusions of law are subject to de novo review without any presumption of correctness. Rhodes, 154 S.W.3d at 46; Perrin, 120 S.W.3d at 826. The question of whether an employee's injuries were the result of willful misconduct is a question of fact, not law. Coleman v. Coker, 321 S.W.2d 540, 543 (Tenn. 1959). Lastly, we apply an abuse of discretion standard when reviewing a trial court's decisions involving procedural matters. Douglas v. Estate of Robertson, 876 S.W.2d 95, 98 (Tenn. 1994)(stating that Tennessee Rule of Civil Procedure 6.2 "grants the trial judge wide latitude to enlarge on statutory or rule mandated limitations for the performance of acts required or allowed to be done within a specified time"); see also Wagner v. Frazier, 712 S.W.2d 109, 113 (Tenn. Ct. App. 1986).

B. Excusable Neglect Defense to Late Filing

As a threshold matter, we address whether the Husband's objections to the referee's findings of fact and conclusions of law should be considered since they were filed after the statutory deadline.

In pertinent part, the Insurers Rehabilitation and Liquidation Act provides that:

When a disputed claim is heard by a referee, the referee shall submit written findings of fact and conclusions of law, together with the recommendation for disposition to the court. The referee's recommendation shall become the final judgment of the court, unless objections to the referee's recommendation are filed by the liquidator

⁵ The Husband's brief on appeal did not address the untimely filing issue or his excusable neglect defense.

or a claimant with the court within fifteen (15) days after the recommendation is mailed to the liquidator and claimant.

Tenn. Code Ann. § 56-9-327(c) (2000).

The referee's findings of fact and conclusions of law were entered on July 12, 2006, and mailed to the parties on that day. The Husband filed his objections on August 1, 2006, which was beyond the applicable filing deadline. Thus, there is no question that the Husband's objections were untimely. However, Tennessee Rule of Civil Procedure 6.02 provides:

When by statute . . . an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion . . . upon motion made after the expiration of the specified time period permit the act to be done, where the failure to act was the result of excusable neglect

In State ex rel. Sizemore v. United Physicians Ins. Risk Retention Group, the Tennessee Court of Appeals addressed the excusable neglect defense and noted that it is an "equitable determination 'taking account of all relevant circumstances surrounding the party's omission.'" 56 S.W.3d 557, 567 (Tenn. Ct. App. 2001) (quoting Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 395 (1993)). The Sizemore Court opined that courts should consider the following factors in ascertaining whether the untimely filing should be considered under the excusable neglect defense: "(1) the danger of prejudice to the party opposing the late filing, (2) the length of the delay and its potential impact on proceedings, (3) the reason why the filing was late and whether the reason or reasons were within the filer's reasonable control, and (4) the filer's good or bad faith." Sizemore, 56 S.W.3d at 567 (citing Pioneer Inv. Servs. Co., 507 U.S. at 395). These factors should not be considered in isolation, but should be examined in the overall context of the litigation. Sizemore, 56 S.W.3d at 567.

Here, the Husband's attorney submitted an affidavit from his legal assistant, Traci Stone, to support his excusable neglect defense. Ms. Stone stated that she spoke with an assistant in the Chancellor's office on July 12, 2006, to ascertain the proper procedure for objecting to the referee's findings of law and conclusions of law. In addition, Ms. Stone also related that the Chancellor's assistant, "faxed me a sample Objection to look at and told me that when she talked to [the Chancellor], she told her that there is not really a time frame for filing an Objection, just that it should be in a reasonable time frame, and she said [the Chancellor] mentioned 30 days."

In dismissing the excusable neglect defense, the Chancellor did not conduct an analysis such as that found in Sizemore. Instead, the Chancellor relied upon the chancery court's practice of not providing legal advice to attorneys and noted that any reference to a "reasonable time frame" was in connection with setting a hearing for the objections, not the deadline for filing the objections.

After employing the factors set forth in Sizemore, we hold that the Husband's attorney's neglect in missing the objections deadline was excusable. First, there is nothing in the record to suggest that the Liquidator has been unduly prejudiced by the late filing. Both parties had ample

opportunity to conduct discovery, present evidence, and bring witnesses before the referee. Thus, the Husband's late filing did not prevent the Liquidator from presenting a material aspect of its case.

Second, the length of the delay was minimal. The Husband's objections were filed five days after the statutory deadline and nothing in the record suggests that this delay has had any impact on the proceedings. With respect to the third factor, the reason for the late filing was the Husband's attorney's failure to conduct a minimal amount of research to learn the applicable deadline for filing objections. This failure was within the attorney's control and he should have relied upon more than his legal assistant's telephone call to the chancery court's clerk. However, since we should not consider any one factor in isolation, we excuse the attorney's failure in light of the lack of proof that the delay negatively impacted the Liquidator. We caution, however, that attorneys should not rely solely on informal means of gathering information, but should instead conduct an adequate amount of legal research to safeguard a client's interests. See Tenn. Sup. Ct. R. 8, R. P. C. 1.3 (requiring that "[a] lawyer shall act with reasonable diligence and promptness in representing a client"). Lastly, there is no suggestion that the Husband acted in bad faith in filing his objections after the statutory deadline. The record does not reveal that the Husband intended his untimely filing to ambush the Liquidator or to gain an unfair advantage. As such, we hold that the Chancellor erred in holding that the Husband's untimely filing was not due to excusable neglect.

C. Willful Misconduct and Emergency

The next issue for review is whether Ms. Green's death was the result of willful misconduct or an emergency. The Liquidator asserts that the Husband's claim should be denied because Ms. Green "committed an intentional act that resulted in an intentional self-inflicted injury, which is not covered by Workers' Compensation." The Chancellor held that while Ms. Green's death arose out of and occurred in the course of her employment, the Husband was not entitled to recovery because the Liquidator had carried its burden in establishing that Ms. Green's self-inflicted injury caused her death. While we agree with the Chancellor that Ms. Green's death arose out of and occurred in the course of her employment, we disagree that her death resulted from willful misconduct.

Generally, for an injury to be compensable under the Workers' Compensation Law, codified at Tennessee Code Annotated sections 50-6-101 to -801 (2005), the injury must both "arise out of" and occur "in the course of" employment. Tenn. Code Ann. § 50-6-103(a) (2005); Blankenship v. Am. Ordnance Sys., L.L.S., 164 S.W.3d 350, 354 (Tenn. 2005); Clark v. Nashville Mach. Elevator Co., 129 S.W.3d 42, 46-47 (Tenn. 2004). Our Supreme Court has opined that the "arising out of" requirement refers to cause or origin; whereas, "in the course of" denotes the time, place, and circumstances of the injury. Hill v. Eagle Bend Mfg., Inc., 942 S.W.2d 483, 487 (Tenn. 1997).

Even if an injury occurred in the course of and arose out of employment, an employer may not have to pay workers' compensation benefits if the employer can establish that the employee's willful misconduct or intentional self-inflicted injury caused the injury. Tennessee Code Annotated section 50-6-110(a) (2005) provides that "[n]o compensation shall be allowed for an injury or death due to the employee's willful misconduct or intentional self-inflicted injury, due to intoxication or

illegal drug useage, or willful failure or refusal to use a safety appliance or perform a duty required by law.” The employer carries the burden of proving the defense. *Id.* at (b).

In *Ins. Co. of Am. v. Hogsett*, our Supreme Court set forth a three-part test for “willful misconduct”: “(1) an intention to do an act, (2) purposeful violation of orders, and (3) an element of perversiveness.”⁶ 486 S.W.2d 730, 733 (Tenn. 1972). The Court has limited the scope of this defense “to the most extreme situations, and has for all practical purposes limited its application to willful disobedience to known and understood prohibitions.” *Wright v. Gunther Nash Mining Constr. Co.*, 614 S.W.2d 796, 798 (Tenn. 1981). In addition, in *Wheeler v. Glens Falls Ins. Co.*, the Court noted that “accident, negligence, inadvertence, thoughtlessness, *error in judgment*, or even recklessness,” do not rise to the level of willful misconduct precluding compensation. 513 S.W.2d 179, 183 (Tenn. 1974) (emphasis added). Moreover, “[t]here is a strong presumption in law against suicide based upon knowledge of man from time immemorial that all creatures within or upon the earth will fight for survival submitting only to death when the struggle appears useless and beyond hope of success.” *Kernodle v. Peerless Life Ins. Co.*, 378 S.W.2d 744, 746 (Tenn. 1964). Lastly, with respect to emergency situations, our Supreme Court has held that “an employee acting in the master’s interest when an emergency arises should not be charged with willful disobedience of orders although the thing he did was a thing forbidden when no emergency existed.” *Johnson v. Copeland*, 158 S.W.2d 986, 988 (Tenn. 1942).

In the case at bar, the record clearly establishes that Ms. Green was experiencing problems with her brakes during her trip. She communicated her concerns to the technicians who serviced her tractor trailer, her supervisor, and another trucker. Ms. Green’s concerns coincide with Trooper William’s and Mr. Stephen’s testimony that an air leak in the brake system could adversely affect her ability to slow or stop her eighteen-wheel tractor trailer. Moreover, Trooper Williams’ investigation revealed that the brakes had become sufficiently hot to produce soot and that hot brakes will “fade.” In addition, Trooper Williams was unable to test whether the front brakes were operating properly. While the Liquidator points out that Ms. Green bypassed two runaway truck ramps, this does not foreclose the possibility that Ms. Green began experiencing problems after that point.

The record does not support the inference that Ms. Green leapt in order to violate a safety rule or that she willfully acted contrary to her employer’s interest. Furthermore, the testimony of the Husband and Mr. Stephens contradict the Liquidator’s suggestion that Ms. Green possibly took her own life. Given the strong presumption against suicide, we find that there is no evidence to suggest Ms. Green committed suicide. Indeed, the record supports the Husband’s inference that Ms. Green perceived herself in danger and leapt from the truck in an attempt to save her life, not end it. Sadly, Ms. Green’s decision was fatally flawed.

Based upon the law and evidence, we hold that the evidence preponderates against the Chancellor’s holding that the Liquidator established the willful misconduct defense. Since the

⁶ “Perverse” is defined as “willfully determined or disposed to go counter to what is expected or desired; contrary.” *The Random House Dictionary of the English Language* 1447 (2d ed. 1987).

parties did not present sufficient evidence concerning Ms. Green's wages, we remand for a new hearing where the parties may introduce proof of the workers' compensation benefits entitled to the Husband.

III. Conclusion

In sum, we hold that the Husband's untimely objections to the referee's findings of fact and conclusions of law were due to excusable neglect. Furthermore, we hold that Ms. Green's death did not result from willful misconduct. Accordingly, we reverse the Chancellor's holdings and remand for a new hearing.

Costs of this appeal are taxed to the Liquidator, for which execution may issue if necessary.

WILLIAM M. BARKER, CHIEF JUSTICE

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

**STATE EX REL. LESLIE A. NEWMAN v. TENNESSEE TRUCKING
ASSOCIATION SELF INSURANCE GROUP TRUST**

Chancery Court for Davidson County
No. 04-245-III

No. M2006-02242-SC-WCM-WC - Filed - June 20, 2008

ORDER

This case is before the Court upon the motion for review filed by Leslie A. Newman, Liquidator of Tennessee Trucking Association Self Insurance Group Trust, in Liquidation, pursuant to Tenn. Code Ann. § 50-6-225(3)(5)(B), 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.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to the Liquidator, for which execution may issue if necessary.

PER CURIAM

WILLIAM M. BARKER, C.J., not participating