

STATE OF TENNESSEE

Workers' Compensation Advisory Council



SIGNIFICANT SUPREME COURT DECISIONS
CALENDAR YEAR 2005

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**STATE OF TENNESSEE  
WORKERS' COMPENSATION ADVISORY COUNCIL**

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**SUMMARY OF
SIGNIFICANT SUPREME COURT DECISIONS
CALENDAR YEAR 2005**

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**INTRODUCTION**

*Tennessee Code Annotated* §50-6-121(c) requires the Workers' Compensation Advisory Council to include, in its annual report, a summary of significant court decisions relating to workers' compensation and an explanation of their impact on existing policy. Inasmuch as the annual report is due mid-year, the Advisory Council thought it would be beneficial to the members of the General Assembly to receive case law information from the prior calendar year at the beginning of the subsequent legislative session. Therefore, the following is the Advisory Council's report regarding the significant decisions of the Supreme Court of Tennessee issued in calendar year 2005.

## SIGNIFICANT SUPREME COURT DECISIONS

### CALENDAR YEAR 2005

#### 1. Comparative Fault & Workers' Compensation

*Curtis v. G. E. Capital Modular Space, et al.*, 155 S.W.3d 877 (Tenn., Feb. 18, 2005)

**Facts:** An employee who tripped and fell while walking across her employer's parking lot brought suit against the employer for workers' compensation benefits. The employer filed an answer alleging, for the first time, that a third party was responsible for the hazard in the parking lot. The employee, more than one year after the injury, filed an amended complaint to add negligence claims against third-party tortfeasors who she alleged caused the hazard in the parking lot. The claim for workers' compensation benefits was settled, leaving only the third-party action to be resolved. The defendants removed the case to federal court and claimed the employee's negligence claims were barred by the one year statute of limitations. The employee, relying on *TCA* §20-1-119, contended she had ninety days from the filing of an answer that identifies a third party tortfeasor to amend the complaint.

**Trial/Panel Results:** The United States District Court for the Eastern District of Tennessee, upon joint motions of the third-party defendants, certified two questions to Supreme Court for resolution: (1) Does *TCA* §20-1-119 extend the limitation period and allow an employee to file of an amended complaint in a workers' compensation case against a third party tortfeasor(s) identified by the employer in its answer? and (2) Does the phrase "applicable statute of limitations" in *TCA*

§20-1-119(a) refer to the original one year limitation or does it refer to the ninety-day “window” provided by *TCA* §20-1-119(a)?

**Supreme Court Decision:** The Supreme Court held that by its plain terms, *TCA* §20-1-119 applies only to civil cases in which “comparative fault is or becomes an issue” and the right to workers’ compensation benefits does not include any issue of fault. The Court also noted that *TCA* §50-6-111 specifically bars an employer from asserting the employee’s negligence as a defense to a workers’ compensation claim and *TCA* §50-6-112(a) permits an injured employee to take benefits under the workers’ compensation law and pursue a tort claim against a third party tortfeasor.

The Supreme Court stated that while workers’ compensation claims and tort claims may arise from the same injury, the claims cannot be combined into one lawsuit because to do so will confuse the fault-based liability of tort with the statutorily imposed “no fault” liability of workers’ compensation. The Supreme Court held ... “in an action instituted against an employer for workers’ compensation benefits and in which the employer files an answer or amended answer naming a third party as having caused all or a part of the plaintiff’s injuries, Tennessee Code Annotated § 20-1-119 is inapplicable and does not extend the limitation period to allow for the filing of an amended complaint against the third party named by the employer and/or other persons named as tortfeasors by the third party in its answer.”

**Impact on Existing Policy:** The Supreme Court has made it clear, for the first time, that an employee may not combine a workers’ compensation claim and a tort claim into one lawsuit and that the workers’ compensation statute of limitation cannot be extended by the tort statute of limitation and any relevant savings statute.

## 2. Sovereign Immunity & Workers' Compensation

*Lanius v. Nashville Electric Service*, \_\_\_ S.W. 3d \_\_\_ (2005 WL 3240670, Tenn., Dec. 2, 2005)

**Facts:** The employee, a resident of Sumner County, filed a complaint in the Chancery Court of Sumner County seeking workers' compensation benefits against his employer, Nashville Electric Service. Subsequently, NES filed a motion to transfer the case to Davidson County contending (1) that as a municipal governmental entity it enjoys sovereign immunity and cannot be sued absent its consent or contrary to any terms that condition its consent and (2) that any action against a municipal entity is a local action, not a transitory action, and, therefore, only the courts of the entity's county of residence has subject matter jurisdiction.

**Trial/Panel Results:** The Chancery Court of Sumner County denied NES's motion but granted its application for interlocutory appeal to the Supreme Court.

**Supreme Court Decision:** The Supreme Court affirmed the trial court and held that the court of jurisdiction and of proper venue is dictated by the Tennessee Workers' Compensation Act inasmuch as NES had, by agreeing to provide workers' compensation benefits under Tennessee's Workers' Compensation Act, waived its sovereign immunity and consented to be sued in fora dictated by the Act's venue provision. The Supreme Court rejected the argument of NES that it could pick and choose which provisions of the Workers' Compensation Act it will and will not accept and rejected the argument that the entity was governed by the language of the Workers'

Compensation Act in effect at the time it elected to accept providing workers' compensation benefits pursuant to the Act.

**Impact on Existing Policy:** This is a case of first impression. The Supreme Court has made it clear that if a municipality voluntarily accepts the Tennessee Workers' Compensation Law it is bound by all aspects of the law until it withdraws its acceptance by giving notice of the withdrawal.

### **3. Coverage - Principal/General Contractor/Subcontractor**

*Bostic v. Dalton*, 158 SW3d 347 (Tenn., Jan. 7, 2005)

**Facts:** Daughter authorized her father to assist her in the construction of a residence on property she owned. The father did not charge for his labor and did not receive any compensation. An employee of a subcontractor sued both the daughter and the father for workers' compensation benefits for injuries suffered as a result of a fall while working on the house. The father and daughter contended they were shielded from liability pursuant to the "owners exemption" contained in *TCA* §50-6-113(f)(1).

**Trial/Panel Results:** The trial court found the father was not liable as he received no compensation for his work. The Appeals Panel affirmed the trial court noting the daughter, as the owner, is exempt from the workers' compensation act pursuant to *TCA* §50-6-113(f)(1). The Panel further concluded the father was the agent of his daughter and thus the exemption also applied to him.

**Supreme Court Decision:** The Supreme Court affirmed the trial court. The Court acknowledged that the Tennessee Workers' Compensation Law creates "statutory employers" so injured construction workers who are unable to recover benefits from their uninsured immediate employer can recover from the principal contractor. However, in the instant case, the Supreme Court stated while the father did meet the statutory definition of a person "engaged in the construction industry" and would normally be required to carry workers' compensation coverage, the daughter had delegated her authority to her father and, therefore, the father was clearly acting as his daughter's agent in overseeing the construction of her residence. The Supreme Court noted that for the owner exemption to be applied to an agent requires that the agent not be compensated.

**Impact on Existing Policy:** This issue is one of first impression; therefore, the opinion clarifies the contractor vertical liability statute in instances where owners delegate authority to a non-compensated agent for the construction of a residence.

#### **4. Scope of Employment**

##### **A. Layoff Status**

*Blankenship v. American Ordnance Systems, LLS*, 164 S.W.3d 350 (Tenn., May 12, 2005)

**Facts:** The employee was temporarily laid off from her job (to assemble bullets) as a result of a decrease in the employer's business. While the employee was on layoff status, the employer posted a notice that medical evaluations for upper body strength would be performed on employees

interested in applying for new jobs being created in the plant. The new jobs had specific lifting requirements and to qualify for the position a person was required to pass a strength test.

The employee took the strength test on the employer's premises and at the time of the test she was still considered an employee pursuant to the union contract although she was not paid for taking the test and was receiving unemployment benefits at the time of the test. Immediately upon completing the test, the employee began to experience weakness in her back which worsened over the next several days. She was diagnosed as having a bulging disc and received a 5% permanent impairment rating. The employee filed a claim against the employer for workers' compensation benefits.

**Trial/Panel Results:** The trial court found that the taking of the test was voluntary and that the employee was not paid to take the test. Thus, the trial court held the back injury was not compensable because it did not arise out of her employment with American Ordnance. The employee's appeal was transferred to the Supreme Court prior to oral argument before the Appeals Panel.

**Supreme Court Decision:** The Supreme Court first discussed the statutory requirements for an injury to be compensable: that the injury must arise out of and occur in the course of the employment, noting these two requirements are not synonymous. The Court explained that an injury occurs in the course of employment if it takes place while the employee was performing a duty he/she was required to perform (focusing on time, place and circumstances of the injury) while the



requirement of “arising out of employment” refers to causation (a causal connection between the conditions under which the work is required to be performed and the resulting injury).

The Supreme Court stated the mere presence of the employee at the place of injury because of employment is not enough, as the injury must result from a danger or hazard peculiar to the work or be caused by a risk inherent in the nature of the work. The Supreme Court rejected the employee’s argument that the injury should be compensable because the employer paid for the strength test, conducted the test on the employer’s premises, and limited the test to employees, as it was not available to the general public. The Supreme Court held the injury neither arose out of her employment (because there is no causal connection between the employee’s job of assembling bullets and the back injury) nor occurred in the course of her employment (taking the test was strictly voluntarily and was not a condition of continued employment).

**Impact on Existing Policy:** This case makes it clear that an employee who is on layoff status is not entitled to workers’ compensation benefits if injured while participating in a testing program for a job unrelated to the job from which the employee is laid off if the taking of the test is not required by the employer for continued employment.

## **B. Company Sponsored Picnic**

*Young v. Taylor-White, LLC*, \_\_\_ S.W.3d \_\_\_ (2005 WL 2665490, Tenn., Oct. 20, 2005)

**Facts:** The employee had been employed by Taylor-White for three years prior to sustaining an injury to her shoulder while participating in a three-legged race at a company sponsored picnic

that was held off the employer's premises in September, 2002. Neither employees nor management were required to attend the picnic. The employee conceded she was not required to attend the picnic and was not required to participate in any games but contended participation was impliedly required as part of her employment.

**Trial/Panel Results:** The trial court applied the "Larsen test" and held the employer liable for the injury reasoning that although the employer did not officially require attendance at the picnic, the employee was encouraged to participate in the games, the employer had approved the games and the employer had paid for the picnic. The Supreme Court accepted review of the case before it was heard by the Special Worker's Compensation Appeals Panel.

**Supreme Court Decision:** The Supreme Court reversed the trial court rejecting the "Larsen test"<sup>1</sup> as a rule for resolving all cases involving recreational injuries.

The Supreme Court stated the voluntary nature of the activity, rather than the fact that the activity occurs on the employer's premises or provided a benefit to the employer, is the touchstone for determining whether the injury occurred during the course of employment.

**Impact on Existing Policy:** This is a case of first impression for the Supreme Court and establishes that the "Larsen test" is not the law in Tennessee.

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<sup>1</sup>The "Larsen test" provides:

Recreational or social activities are within the course of employment when:

(1) they occur on the premises during a lunch or recreational period as a regular incident of the employment; or (2) the employer, by expressly or impliedly requiring participation, or by making the activity part of the services of the employee, brings the activity within the orbit of the employment; or (3) the employer derives substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation and social life.

2 *Larson's Workers' Compensation Law* § 22.01 (2001)]

## 5. Gradually Occurring Injuries

### A. Last Injurious Injury Rule

*Mahoney v. NationsBank of Tennessee, N.A.*, 158 S.W.3d 340 (Tenn., Feb. 23, 2005)

**Facts:** The employee, while working for Boatmen's Bank, suffered a compensable injury in 1996 (carpal tunnel syndrome). On January 1, 1997, Boatmen's Bank and NationsBank merged. The employee filed suit for workers' compensation benefits on March 19, 1998 against both Boatmen's and NationsBank, but later voluntarily dismissed Boatmen's Bank in January of 2000. The trial proceeded against NationsBank only.

**Trial/Panel Results:** The trial court awarded the employee workers' compensation benefits holding the injury arose out of and in the course and scope of the employment with NationsBank and that the injury was a continuous injury. NationsBank appealed. Review by the Supreme Court was accepted before the Appeals Panel could hear the case.

**Supreme Court Decision:** The Court discussed the issue of gradually-occurring injuries and its prior holdings: (a) a gradually-occurring injury is compensable under the Workers' Compensation Act; (b) for purposes of determining when the one-year statute of limitations begins to run, the date of a gradually-occurring injury is the date the employee becomes unable to work; (c) the "last day worked" rule operates to fix a date certain when the employee knows or should know he/she has sustained a work-related injury; (d) when an employee's gradually-occurring injury grows progressively worse with each new trauma each day at work, the date of injury is the date the employee is finally prevented from working; and (e) the last day worked rule does not apply when

the employee provides actual notice of the injury to the employer, because in that event there is no question the employee knows the work-related nature of his/ her injury and, therefore, there is no reason to use another date;

The Supreme Court held that the employee had given actual notice of the injury to Boatmen's in 1996; therefore, there is no question the employee knew of the work-related nature of her injury and there is no need to utilize another date as the "date of injury". In addition, the employee first missed work while an employee of Boatmen's.

The Supreme Court noted that although it had never addressed the issue, the Appeals Panel has applied the "last injurious injury rule" to gradually-occurring injuries such as carpal tunnel syndrome. The Supreme Court stated it found the Panel opinions to be well-reasoned and held that the last injurious injury rule does apply to gradually-occurring injuries. However, the Supreme Court reversed the trial court's award of benefits against NationsBank as it found the employee's injury had not progressed during her employment by NationsBank and the injury was not aggravated by her employment by NationsBank.

**Impact on Existing Policy:** The Supreme Court's holding that the last injurious injury rule does apply to gradually-occurring injuries as well as occupational diseases is a new ruling by the Court and clarifies the issue that had been considered in several cases by the Appeals Panel.

## **B. Notice Requirements**

*Banks v. United Parcel Service, Inc.*, 170 S.W.3d 556 (Tenn., Aug. 18, 2005)

**Facts:** The employee worked for UPS for thirty years. The majority of his career involved making deliveries to residences and businesses in two Tennessee counties, a job that required him to make 50-60 deliveries per day and to lift between 120-200 packages per day, many of which weighed over 50 pounds. The employee first noticed left knee stiffness in 1991. He did not think the pain was work-related because there was no specific incident involving the knee at work. A subsequent MRI revealed a torn medial meniscus and early arthritic changes in his left knee.

The employee continued to have pain in his knee over the next several years. In April, 2001, Dr. Allen Anderson, who first treated the employee for knee problems in September of 1993 and again in June, 1998, advised the employee that he needed knee replacement surgery. The employee delayed the surgery because he knew he would not be able to perform his job after the surgery. Finally, when the pain became unbearable, the employee scheduled surgery for November 5, 2001. He was off work from November 5, 2001 until March 3, 2002 when Dr. Anderson released him to return to work, and restricted the employee from lifting over fifty pounds and from kneeling, crawling or sitting for more than three hours. Because the employee could not perform his previous jobs with UPS with these restrictions, he took retired status as of March 4, 2002.

The employee testified at trial that he did not believe he had a workers' compensation injury because he was not injured in a specific incident on the job and that he never discussed with Dr. Anderson whether the injury was work-related. Dr. Anderson testified the employee never

mentioned that the injury was work-related. A supervisor testified he assumed the knee injury was work-related but did not share this assumption with the employee. Prior to the surgery, co-workers suggested to the employee that the injury might be work-related and advised him to see an attorney.

The employee saw an attorney who immediately sent a letter to Dr. Anderson requesting medical records. Dr. Anderson did not respond to the letter and approximately seven months later the attorney sent a second letter to Dr. Anderson stating that the employee felt his employment had aggravated his knee. Within a short time, Dr. Anderson responded in writing that in his opinion the employment had aggravated a preexisting condition and that the employee sustained a 37% impairment to the left leg. The employee testified at trial that after he learned of this letter he notified UPS that his injury was work-related. UPS denied compensability based on late notice.

**Trial/Panel Results:** The trial court held the employee's notice of a gradually-occurring injury to be timely, held the employment aggravated a preexisting condition causing a progression of the disease and awarded 70% permanent disability to the left leg and 17 weeks of temporary total disability benefits (from the date of surgery to the date he was released to return to work with restrictions). The Panel affirmed the trial court's decision that the notice was timely and affirmed the award of 70% permanent disability but reversed the award of temporary disability benefits.

**Supreme Court Decision:** The Supreme Court noted the General Assembly amended the workers' compensation statute in 2001 to address gradually-occurring injuries such as the one sustained by the employee. The amendment recognizes that although a gradually-occurring injury occurs over time, some date must be chosen to trigger the notice requirement but that employees are relieved from the notice requirement until they know or reasonably should know the injury was

caused by their work and that the injury has either impaired them permanently or has prevented them from performing normal work activities.

In addition, the Supreme Court, citing two of its prior decisions, stated it “must be guided by the longstanding rule that the workers’ compensation statutes are to be liberally construed and that doubt should be resolved in favor of the employee.” Thus, the Supreme Court affirmed the holding of timely notice, noting that whether the employee knew or should of known he had sustained a work-related injury prior to learning from his attorney of Dr. Anderson’s opinion in the May, 2002 letter is a question of fact.

The Supreme Court also addressed an issue related to temporary total disability benefits. It affirmed the trial court’s award of 17 weeks of temporary total disability, rejecting the employer’s position that an employee is not entitled to temporary total benefits for a time of incapacitation that pre-dates the notice given to the employer that the injury is work-related. The Supreme Court stated where the employee is ignorant of the work-related nature of his injury, the employer’s interest (being able to timely investigate the facts surrounding the injury and to provide timely and proper medical treatment) must yield to the remedial purpose of the statute.

**Impact on Existing Policy:** The Supreme Court made it clear that it favors a construction of timing (notice) provisions that preserve a worker’s right to benefits and it is inequitable to bar an employee from receiving disability benefits prior to the date certain when the employee knows or should know he/she sustained a work-related injury. This opinion continues the courts’ holdings that the notice requirements of the Workers’ Compensation Laws will yield to the other portions of the

statute requiring a liberal construction in favor of the employee and that these issues will be factual issues, not legal ones.

## **6. Hedonic Damages (Loss of Enjoyment of Life)**

*Lang v. Nissan North America, Inc.*, 170 S.W.3d 564 (Tenn., Aug. 16, 2005)

**Facts:** The employee sustained a work-related binaural hearing loss resulting in permanent impairment. The employee missed no time from work due to his work related injury. Two experts testified via deposition and the employee received impairment ratings of 26.6% and 22.5% for the binaural hearing loss.

**Trial/Panel Results:** The trial court found the hearing loss to have been caused by the employment and awarded permanent disability benefits of 9% for binaural hearing loss (which amounted to 13.5 weeks of benefits). The trial court awarded less than the impairment ratings because the employee was able to continue to work at his pre-injury position without interruption and determined the hearing loss “to be only a minor factor in his employability”.

The Appeals Panel increased the disability award to 45% (equating to 67.5 weeks of benefits) based on a finding that his employability in the open job market had been impacted by the injury. The Appeals Panel also opined that even though the employee lost no time from work due to the injury and continued to work in the same or similar position, “there has been a loss of his ability to enjoy normal, everyday activities generally taken for granted because hearing is required for virtually every human function”.



**Supreme Court Decision:** The Supreme Court granted the appeal to resolve two issues: (1) Whether the evidence preponderates against the trial court's award of 9% permanent disability for loss of hearing? and (2) Whether the Appeals Panel erred in considering the issue of hedonic damages (damages for the loss of enjoyment of life) as a basis for workers' compensation benefits? The Supreme Court concluded the trial court improperly discounted the significant permanent hearing loss sustained by the employee because he continued in the same employment and noted the hearing loss would detract from his employability in the open job market and adopted the Panel's award of 45% disability or 67.5 weeks of benefits.

As to the issue of hedonic damages, the Supreme Court concluded the Appeals Panel had erred in considering these damages in determining the employee's permanent disability holding that Tennessee workers' compensation law does not recognize the loss of enjoyment of life as the basis for the recovery of workers' compensation benefits. In addition, the Supreme Court stated that to recognize hedonic damages as a basis for recovery of workers' compensation benefits would run counter to the exclusive-remedy principle that underlies the policy balance of workers' compensation law.

**Impact on Existing Policy:** This case presented a question of first impression for the Supreme Court. Although it did hold that hedonic damages (damages for the loss of enjoyment of life) are not an appropriate basis for a recovery in workers' compensation, the Supreme Court did note that for the purpose of establishing anatomical or vocational disability, it is appropriate to consider how a work-related injury affects an employee's capacity to engage in the normal, everyday activities.

## 7. Medical Benefits - Nursing Services

*Long v. Mid-Tennessee Ford Truck Sales, Inc., et al.*, 160 S.W.3d 504 (Tenn., Mar. 18, 2005)

**Facts:** The employee sustained a work related injury to his right foot. He had a very poor recovery and had understood from his doctor's oral instructions that he would need home medical care following surgery. The employee had requested the workers' compensation carrier to provide nursing care, but the request was refused. The employee's wife, a certified nurse technician, took 17 weeks off work (she was not working as a CNT but had kept her license current) to take care of her husband. The employee filed suit seeking permanent total disability benefits and compensation for the nursing services provided to him by his wife.

**Trial/Panel Results:** The trial court denied the employee's claim for permanent total disability benefits, ordering 40% disability to the right foot. In addition, the trial court denied the employee's claim to be reimbursed for the nursing services provided by his wife who was a certified nurse technician. The Appeals Panel affirmed the trial court in all respects.

**Supreme Court Decision:** The Supreme Court first addressed the issue of the compensability of nursing services, stating *TCA* §50-6-204(a)(1) provides that nursing services ordered by the attending physician are compensable and noting the case of *Sullivan ex rel. Hightower v. Edwards Oil Co.*, 141 S.W. 3d 544 (Tenn. 2004) held for nursing services to be compensable they must be provided by a professional nurse, rather than a family member.

The Supreme Court held since Mr. Long's wife was a professional nurse the care provided by her to the employee was compensable. The Court noted the employer's argument that the wife's

services were voluntary and without charge and, therefore, merely “wifely duties” penalizes the plaintiff for the situation the employer had created by refusing to pay for nursing care. In addition, the Court held that the doctor does not have to reduce the order for nursing services to writing for the services to be compensable. The Supreme Court remanded the case to the trial court to determine the value of the nursing services rendered based on the cost of obtaining comparable care from a similarly licensed CNT or nurses aide, not on the wife’s lost wages.

**Impact on Existing Policy:** The Supreme Court clarified that nursing services that are provided by a family member who is a professional are compensable and must be paid for by the employer if the employer has not elected to provide care from another professional.

#### **8. Temporary Total Disability (TTD) Benefits - Maximum TTD Benefits Allowed**

*Wausau Ins. Co. v. Dorsett*, 172 S.W.3d 538 (Tenn., Aug. 19, 2005)

**Facts:** The employee alleged a work-related injury caused by a brown recluse spider bite in May, 1997, while working for Rawlings Sporting Goods. The employer’s insurer filed suit against the employee in June, 2000. The employee’s condition did not improve as the doctors had hoped and she continued to receive medical treatment. The treating physician’s deposition was first taken in June, 2001, and he testified that the employee had not reached maximum medical improvement. The employee continued medical treatment, but her condition still did not improve. The treating

physician was deposed again in October, 2004, shortly before the trial was scheduled. Again, the doctor testified the employee had not reached maximum medical improvement.

The employer requested that the trial be continued as the employee had not reached maximum medical improvement. The employee maintained the trial should proceed and that she should be found to be permanently totally disabled or, in the alternative, that the employer be ordered to continue paying temporary total disability benefits until she reached maximum medical improvement.

**Trial/Panel Results:** The trial court ordered a continuance of the trial but ordered the employer to continue payment of TTD benefits until the employee reached maximum medical improvement even if the payment period exceeded 400 weeks. The trial court granted both the employee and employer's requests to seek an interlocutory appeal.

**Supreme Court Decision:** The Supreme Court reversed the trial court and held that an employer's liability for temporary total disability benefits is statutorily limited to 400 weeks. The Supreme Court based its decision on the definition of "maximum total benefit". Quoting from the case of *Vinson v. United Parcel Service*, 92 S.W.3d 380, 384 (Tenn. 2002) the Court stated:

"Maximum total benefit" means the sum of all weekly benefits to which a worker is entitled; and...[f]or injuries occurring on or after July 1, 1992, the maximum total benefit shall be 400 weeks times the maximum weekly benefit except in the instances of permanent total disability .

**Impact on Existing Policy:** This is a case of first impression. With regard to Mrs. Dorsett, the Supreme Court stated that the concept of “maximum total benefit” and its application to the facts in this case places her in a difficult position because she has not reached maximum medical improvement and the physician has refused to assign an impairment rating. Acknowledging sympathy to Mrs. Dorsett’s situation, the Supreme Court stated:

“...this Court has no authority to alter the statutory definition of maximum total benefit. Whether this statutory definition should be revised to exclude temporary total disability from the 400-week limitation is a question for the legislature, not the judiciary.”

**NOTE:** The Special Workers’ Compensation Panel recently addressed the “maximum total benefit” issue in the case of *Wolford v. Ace Trucking, Inc.* (2005 WL3051124, Tenn. Workers Comp Panel, Nov. 14, 2005 - Not for Publication). Although this case cannot be cited as controlling authority except as between the parties to the case, it appears the Panel is interpreting the *Dorsett* case as holding that both temporary disability benefits and permanent partial disability benefits are included in the 400 weeks maximum total benefit. The Panel noted the employee had received temporary total disability benefits from July 14, 2000 until he reached maximum medical improvement on December 13, 2002 and stated “(b)ased on the trial court’s ruling, the employee is entitled to permanent partial disability benefits for the balance of the maximum total benefit of 400 weeks that he has not already received.”

## 9. AMA Guides

*Dotson v. Rice-Chrysler-Plymouth-Dodge, Inc. et al.*, 160 S.W.3d 495, Tenn, March 16, 2005

**Facts:** The employee sustained a work-related injury that caused reflex sympathetic dystrophy (RSD) in the left arm and had not worked since the injury. The employee contended he was entitled to permanent disability benefits to the body as a whole because the *AMA Guides* converts the impairment for reflex sympathetic dystrophy to the body as a whole.

**Trial/Panel Results:** The Trial Court awarded permanent total disability benefits holding, as a matter of law, that reflex sympathetic dystrophy must always be apportioned to the body as a whole because of the conversion scheme for RSD provided in the *AMA Guides*. The Supreme Court accepted review prior to consideration by the Appeals Panel.

**Supreme Court Decision:** The Supreme Court stated the primary issue is one of first impression: Whether, for purposes of workers' compensation, RSD must always be classified as an injury to the body as a whole, regardless of whether the effects of the RSD are limited to a scheduled member? The Supreme Court held that the Workers' Compensation Act does not elevate the *AMA Guides* to the status of law stating that the *Guides* "are nothing more than tools for effectuating in a fair and predictable way the paramount goals and requirements of the workers' compensation statutory scheme."

The Supreme Court also stated that in prior opinions it has held the mere fact that a scheduled injury can be converted via the *Guides* to the body as a whole provides no basis upon which to sustain an award of disability benefits to the body as a whole and cannot alter the rule that if an injury is to a scheduled member only, the statutory schedules must control the disability award. The

Supreme Court held, therefore, that where RSD affects a scheduled member alone, an award of permanent disability benefits is limited exclusively to what the schedule for that member provides. For RSD to be properly apportioned to the body as a whole, the injury must affect a portion of the body that is not scheduled, must affect a particular combination of members not statutorily provided for or must cause permanent injury to an unscheduled portion of the body.

**Impact on Existing Policy:** This case was one of first impression. It does provide clarity on the issue of application of the AMA *Guides* in situations where the injury is confined to a scheduled member by holding the impairment cannot be converted to the body as a whole.

## CONCLUSION

The Workers' Compensation Advisory Council respectfully submits this report to the General Assembly. A copy of the report will be sent to the Governor, the Speaker of the Senate and the Speaker of the House. A copy of the report will be posted on the website of the Advisory Council [[www.state.tn.us/labor-wfd/wcac](http://www.state.tn.us/labor-wfd/wcac)] and notification of the posting will be sent vial e-mail to all members of the General Assembly.

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



Dale Sims, State Treasurer  
Chair