IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT MEMPHIS
February 1, 2016 Session

CYNTHIA ELLIOTT v. THE GOODYEAR TIRE & RUBBER COMPANY

Appeal from the Chancery Court for Weakley County
No. 21640 W. Michael Maloan, Chancellor

No. W2015-01752-SC-R3-WC – Mailed March 15, 2016; Filed April 18, 2016

Cynthia Elliott ("Employee") alleged that she sustained a compensable aggravation of her preexisting knee arthritis because of a fall that occurred in the course of her employment at Goodyear ("Employer"). Employer provided medical care for several months through its workers' compensation carrier[1] but then denied the claim for right knee total replacement surgery as well as her claim for disability benefits, based on the opinion of the treating physician that the fall did not aggravate or advance the preexisting condition. Employee then had knee replacement surgery through her group healthcare insurance. The trial court received deposition testimony from three orthopaedic surgeons and medical records from several other doctors. It ruled that the fall at work had aggravated Employee's arthritis and awarded benefits. Employer has appealed, contending that the evidence preponderates against the trial court's finding of compensability. 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.

[1] According to the record Liberty Mutual Insurance Company was the carrier for workers' compensation claims for Goodyear employees.

Tenn. Code Ann. § 50-6-225(a)(2) (2014) Appeal as of Right; Judgment of the Chancery Court Affirmed

JUDGE JAMES F. RUSSELL, delivered the opinion of the Court, in which HOLLY M. KIRBY, J. and JUDGE RHYNETTE N. HURD, joined.

Kirk L. Moore, Union City, Tennessee, for the appellant, Goodyear Tire & Rubber Co.

Jeffrey P. Boyd, Jackson, Tennessee, for the appellee, Cynthia Elliott.

OPINION

Factual and Procedural History

Employee was sixty years old at the time of trial on July 15, 2015. She was fifty-six years old on January 12, 2010, the date of her alleged work-related injury. She is a high school graduate and also holds a Bachelor's degree in Biology from the University of Tennessee at Martin. She started working for Employer shortly after she received her degree. Over the following thirty-three years, she worked as a manager in various departments of Employer's Union City, Tennessee plant. Her assignments included the tire room, the chemistry lab, the banbury department and the curing department, where her position was technology engineering specialist.

Employee sustained an injury to both knees in 2006. The incident occurred during a strike, during which management employees were directed to work in various production jobs in order to keep production going. Employee was assigned to work as an inspector on the "hook line." A large tire that she was inspecting slipped or shifted, causing her to fall across a conveyor belt onto her knees. She testified that she did not file a workers' compensation claim because it was "frowned upon" for management employees to file injury claims, especially during the strike.

Employee initially sought treatment from her primary care physician, Dr Hinds. He provided conservative treatment and eventually referred her to Dr. Lund, an orthopaedic surgeon. Dr. Lund ordered a bone scan, which revealed degenerative changes in both knees. Dr. Lund ordered physical therapy and a series of injections to both knees. Dr. Lund described these treatments to Employee as a "last ditch" effort to avoid knee replacement surgery. When Employee did not improve by January or February of 2008, Dr. Lund referred her to Dr. David DeBoer, a joint replacement specialist. Dr. DeBoer recommended

total knee replacement for both knees. On April 21, 2008, Dr. DeBoer performed a left total knee replacement. Employee continued to have problems with her left knee. In September 2008, Dr. DeBoer performed a manipulation under anesthesia in an attempt to improve Employee's knee function. This procedure was only partially successful. By March 2009, Employee decided she was not going to proceed with a right knee replacement, although she continued to have symptoms on that side. Employee returned to work after the left knee replacement. The date of her return is not clearly set out in the record. Employer modified her job to accommodate restrictions placed by Dr. DeBoer. Employee testified that, after March 2009, she was able to manage her right knee pain with heat, ice packs and elevation.

On January 12, 2010, Employee was at her desk, doing paperwork. She rose to get a book on a cabinet above the desk. As she turned to sit down, her foot got caught on the bottom of the desk, causing her to twist her leg and fall onto her knees. She felt immediate sharp pain in her knees. Her fellow employees assisted her in getting back into her chair. The next day, she sought medical care from the plant physician, Dr. Eason, who ordered heat, ice and Motrin. When these measures did not alleviate her symptoms, Dr. Eason recommended referral to an orthopaedic surgeon. Employer provided a list of surgeons and Employee selected Dr. Michael Calfee.

Employee first saw Dr. Calfee on February 11, 2010.[2] He ordered an MRI, which showed tricompartmental arthritis and a meniscus tear. Dr. Calfee reviewed the records of Drs. Hinds, Lund and DeBoer. He observed that Employee had complained of pain in both knees as early as June 2007. Dr. Calfee reviewed the July 2007 bone scan. He opined that the study showed osteoarthritis of both knees. Dr. Calfee also reviewed the July 2007 bone scan. He opined that study showed moderate to severe arthritis of both knees. Dr. Calfee testified that osteoarthritis is a progressive condition that cannot be reversed, and once the joint line is lost, the only effective treatment is knee replacement surgery. X-rays ordered by Dr. DeBoer showed a complete loss of joint space and other classic hallmarks of arthritis. Dr. Calfee said the x-ray showed Employee's right knee was "bone-on-bone." Dr. Calfee testified that, based on the available medical records, Dr. DeBoer had recommended that Employee have total replacements of both knees in 2008. Dr. Calfee also testified that Dr. DeBoer's records described Employee's right knee joint as "bone-on-bone" in December 2008.

Dr. Calfee testified that when Employee came to him in February 2010, he thought she

[2] The transcript of Dr. Calfee's testimony at p. 5 lines 17-20 is not complete and misleading. According to his office records which may be found as Ex. No. 5 in Vol. 5 of the record, Dr. Calfee actually opened his file and began seeing the patient on "2/11/10."

had exacerbated her preexisting arthritis. After reviewing the MRI, he ordered a series of injections; first cortisone, then Synvisc. These treatments did not improve Employee's symptoms. Based on the records of the other physicians, Dr. Calfee also stated that Employee had no new symptoms after the January 2010 fall. He opined that her anatomic condition was not changed by that event. Comparing x-rays from 2007 and 2010, Dr. Calfee did not discern any significant change in Employee's right knee. He opined that Employee needed knee replacement surgery without regard to the January 2010 incident. He set out those findings and opinions in a January 10, 2011[3] letter to Employer's insurer. On February 17, 2011, the insurer declined to provide further medical treatment. Dr. Calfee did not have contact with Employee after that date.

After the denial of her claim, Employee returned to Dr. DeBoer for treatment of her right knee. He performed a right total knee replacement on May 10, 2011. Employee was off work for nine months following the surgery. During that time, Employer closed the Union City facility. Employee was offered a job at Employer's Danville, Virginia facility. However, when she presented herself there, she was informed that she would not be allowed to return to work for Employer due to the restrictions placed on her as a result of her surgeries. She returned to Tennessee and attempted to find employment. She estimated that she had applied for over one hundred jobs in the three years preceding the trial. Employee testified that her last job interview occurred in April or May of 2013. As of July 2015, she was receiving social security disability benefits and a pension from Employer.

Employee testified that Dr. DeBoer had prescribed a cane for her and that she sometimes used it. She had continuing pain and discomfort in her right knee, and it occasionally buckled. On cross-examination, Employee agreed that she had symptoms in both knees in 2007. She agreed that Dr. Lund told her she had moderate to severe arthritis in her right knee in August 2007. Employee also stated that Dr. Lund told her that the Synvisc injections he prescribed in October 2007 were a "last ditch" effort to avoid or delay total knee replacement. When Employee began to see Dr. DeBoer in early 2008, she told him she had pain in her right knee every day. She testified that he recommended bilateral knee replacements before the left knee replacement surgery in April 2008. She decided not to proceed with the right knee procedure as a result of the post-surgical problems with her left knee. Employee stated that she ultimately agreed to have her right knee replaced in May 2011 because the pain had become unbearable. She testified that, after the right knee replacement, her pain level was two or three on a scale of ten on a good day; on a bad day, it was eight of ten. She added that her right knee did not prevent her from engaging in any

[3] The letter to which reference is made here is found among the office records of Dr. Calfee. It actually shows a date of January 18, 2010, which is obviously not correct. It should have been January 18, 2011. Prior to that time Dr. Calfee had treated her as a workers' compensation patient.

activities but caused her to move more slowly. Employee also stated that she thought she was capable of performing any of the jobs she had performed for Employer.

Dr. Apurva Dalal, an orthopaedic surgeon, conducted an independent medical examination on April 8, 2014 at the request of Employee's attorney. Dr. Dalal took a history from Employee and performed a physical examination. He reviewed the records of Dr. DeBoer, as well as x-rays from 2008 and 2010. He opined that Employee had a "significant" loss of joint space in the right knee in 2008, which advanced to a complete loss of joint space in 2010. Dr. Dalal opined that Employee had arthritis prior to the January 2010 fall, but that the incident had aggravated that condition, leading to the right knee replacement in 2011. He assigned 59% impairment to the right leg as a consequence of the surgery.

On cross-examination, Dr. Dalal admitted that, other than the 2008 x-ray, he had not seen any medical records of the physicians who treated Employee's knee before the January 2010 incident. He also stated that he had not reviewed any depositions in the preparation of his report or for his deposition. He noted that Employee had only a left knee replacement after her 2006 injury and inferred that she did not need a right knee replacement at that time. Dr. Dalal considered the January 2010 incident to be the "straw that broke the camel's back" as to Employee's need for a right knee replacement. He agreed with Dr. Calfee's statement that osteoarthritis cannot be stopped or reversed. Dr. Dalal also testified that his impairment rating was based in part on diminished range of motion in Employee's right knee. He did not know if she had diminished range of motion before January 2010.

Dr. Eugene Gulish, an orthopaedic surgeon, conducted an independent medical examination on September 11, 2014 at the request of Employer's attorney. He reviewed the records of Employee's physicians, other than Dr. Lund, as well as x-rays and other diagnostic studies. He interpreted Dr. DeBoer's note of February 7, 2008 as recommending total knee replacements for both of Employee's knees. Consistent with Dr. Lund's statement to Employee, Dr. Gulish described Synvisc injections as a final effort to delay knee replacement. Dr. Gulish had reviewed x-rays and similar studies from 2007 until after her surgery. He stated that Employee's right knee looked the same from 2007 until the last pre-surgery study. Dr. Gulish also said that it would be very unusual for a knee in the same condition as Employee's right knee to become asymptomatic. He also opined that narrowing of the joint space eventually caused the meniscus tear shown in the 2011 MRI. Dr. Gulish ultimately opined that the January 2010 fall did not cause any anatomical change in Employee's right knee. Under questioning by Employee's attorney, Dr. Gulish testified pain is the primary reason for performing a total knee replacement. He also said that the procedure itself causes an anatomical change and that Employee would be entitled to an impairment rating under the AMA Guides. Dr. Gulish recommended that Employee should

be limited to light duty, mostly sitting with short periods of standing and walking.

The trial court issued its findings and conclusions from the bench. After reviewing the medical evidence, it found that the January 2010 fall had advanced Employee's pre-existing arthritis and led to the total knee replacement surgery by Dr. DeBoer in May 2011. It awarded 75% permanent partial disability to the right leg. Judgment was entered in accordance with those findings. Employer timely appealed, and the case was referred to this Panel pursuant to Tennessee Supreme Court Rule 51.

Analysis

Employer raises one issue on appeal. It asserts that the evidence preponderates against the trial court's finding of compensability. The standard of review of issues of fact in a workers' compensation case is *de novo* upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. Tenn. Code Ann. § 50-6-225(a)(2) (2014). When credibility and weight to be given testimony are involved, considerable deference is given the trial court when the trial judge had the opportunity to observe the witness' demeanor and to hear in-court testimony. *Madden v. Holland Group of Tenn.*, 277 S.W.3d 896, 900 (Tenn. 2009). 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). A trial court's conclusions of law are reviewed *de novo* upon the record with no presumption of correctness. *Seiber v. Reeves Logging,* 284 S.W.3d 294, 298 (Tenn. 2009).

The issue presented here is causation. At the time the alleged injury occurred[4], the standard for determining cause was that the workers' compensation laws should be "liberally construed to promote and adhere to the [purposes of the Workers' Compensation] Act of securing benefits to those workers who fall within its coverage." *Martin v. Lear Corp.*, 90 S.W.3d 626, 629 (Tenn. 2002). Nonetheless, the burden of proving each element of her cause of action rested upon the Employee in every workers' compensation case. *Elmore v. Travelers Ins. Co.*, 824 S.W.2d 541, 543 (Tenn.1992). All reasonable doubts as to the causation of an injury and whether the injury arose out of the employment were to be resolved in favor of the Employee. *Phillips v. A. & H Constr. Co.*, 134 S.W.3d 145, 150 (Tenn. 2004); *Reeser v. Yellow Freight Sys., Inc.*, 938 S.W.2d 690, 692 (Tenn. 1997). Our

[4] The General Assembly has changed the standard for proving causation for gradual injuries occurring after June 11, 2011 and for all injuries occurring after July 1, 2014. *See* Tenn. Code Ann. §§ 50-6-102(12) (Supp. 2011) and 50-6-102(13) (2014).

courts "consistently held that an award may properly be based upon medical testimony to the effect that a given incident 'could be' the cause of the employee's injury, when there is also lay testimony from which it reasonably may be inferred that the incident was in fact the cause of the injury." *Reeser*, 938 S.W.2d at 692; *accord Long v. Tri-Con Indus., Ltd.*, 996 S.W.2d 173, 177 (Tenn. 1999); *P & L Constr. Co. v. Lankford*, 559 S. W.2d 793, 794 (Tenn. 1978); *GAF Bldg. Materials v. George*, 47 S.W.3d 430, 433 (Tenn. Workers' Comp. Panel 2001). The element of causation was satisfied where the "injury ha[d] a rational, causal connection to the work." *Braden v. Sears, Roebuck & Co.*, 833 S.W.2d 496, 498 (Tenn. 1992).

The injury in this case is an alleged aggravation of a preexisting condition. This topic has been visited by the Supreme Court and this Panel on many occasions over the years. The Supreme Court succinctly summarized the law pertaining to aggravation in *Trosper v. Armstrong Wood Products, Inc.*, 273 S.W.3d 598 (Tenn. 2008):

> We reiterate that the employee does not suffer a compensable injury where the work activity aggravates the pre-existing condition merely by increasing the pain. However, if the work injury advances the severity of the pre-existing condition, or if, as a result of the pre-existing condition, the employee suffers a new, distinct injury other than increased pain, then the work injury is compensable.

273 S.W.3d at 607.

Except in the most obvious cases, causation must be proven by expert medical evidence. *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 676 (Tenn. 1991). This is not an obvious case, and both sides produced expert medical testimony. A trial court generally has the discretion to choose which expert to accredit when, as here, there is a conflict of expert opinions. *Johnson v. Midwesco, Inc.*, 801 S.W.2d 804, 806 (Tenn. 1990); *Kellerman v. Food Lion, Inc.*, 929 S.W.2d 333, 335 (Tenn. Workers' Comp. Panel 1996). In evaluating conflicting expert testimony, a trial court "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 other experts." *Orman*, 803 S.W.2d at 676.

The medical proof presented to the trial court consisted of the deposition testimony of Drs. Calfee, Gulish and Dalal and medical records of Drs. Hinds, Lund and DeBoer, attached as exhibits to the depositions of Dr. Calfee and Dr. Gulish. None of the testifying physicians saw Employee before the January 2010 fall. None of the physicians who treated Employee before the fall testified. Dr. Calfee was Employee's treating physician for several months after the fall. Dr. Dalal and Dr. Gulish were evaluators only. Dr. Calfee and Dr. Gulish had

reviewed records of Employee's medical treatment prior to January 2010. Dr. Dalal reviewed an x-ray from 2008, but had no other information concerning medical treatment prior to January 2010. The records of Dr. Lund and Dr. DeBoer state that each doctor recommended bilateral knee replacements to Employee in 2007 and 2008, respectively.

Dr. Calfee and Dr. Gulish compared x-rays and other studies from 2007 and 2008 to x-rays taken shortly after Employee's fall in January 2010. Each opined that the joint space in Employee's right knee was completely lost by 2008 and that there was no significant difference between the earlier films and the later one. Dr. Dalal, on the other hand, testified that the 2010 x-ray showed increased deterioration of the joint space in the knee. Dr. Calfee and Dr. Gulish testified that a right total knee replacement was the appropriate treatment for Employee's knee by 2008. Dr. Dalal said that the procedure was not necessary until after January 2010. Dr. Dalal also opined that the torn meniscus shown by the 2011 MRI was caused by Employee's fall at work. Dr. Calfee and Dr. Gulish considered the meniscus tear to be a natural consequence of progressive arthritis in the knee. All three doctors stated that Employee had moderate to severe arthritis in 2008 or earlier. All also agreed that knee replacement surgery was inevitable prior to January 2010According to the evidence the Employer treated the event as compensable throughout.

The Employee testified as follows, all of which is undisputed:

> Q. Did you seek medical attention?
> A. Not at the time, did not.
> Q. When was the first time you were provided medical attention?
> A. The following day.
> Q. Who?
> A. Dr. Eason.
> Q. Is he the plant doctor?
> A. Yes, sir.
> Q. What did Dr. Eason do for you?
> A. Dr. Eason examined, saw the swelling and bruising, and everything, and at that time, he recommended I stay at the first aid office where he administered probably 30 minutes of ice and heat, and I was given Motrin to take, and that was the course of treatment he asked me to continue at home.
> Q. Did that course of treatment help you?
> A. No, sir.
> Q. Were you having constant pain at this point?
> A. Yes, sir.
> Q. How was the pain at this point compared to what it had been

prior to the fall?
A. It was awful. It was more severe than the pain I had before I fell. It was excruciating pain.
Q. And you say you had swelling?
A. Yes, sir.
Q. Did the Motrin or ice or any of that, did that help the pain or swelling?
A. No, sir.
Q. What did you do next?
A. I continued going to first aid and seeing Eason, and finally after he noticed, as well, that I was still having the swelling and I was telling him about the pain, he recommend that I go see an orthopedic doctor.
Q. At this point, did Goodyear provide you with a panel of doctors to choose from or anything under worker's comp?
A. Yes, sir.
Q. Who did you choose off of the panel?
A. Dr. Calfee.
Q. You went to Dr. Calfee?
A. Yes, sir.
Q. What course of treatment did he propose for you?
A. He recommend that I take a series of injections to my knee that would possibly alleviate some of the discomfort that I was experiencing.
Q. When you went and saw Dr. Calfee for the first time, did you tell him about your previous left knee total replacement?
A. Yes, sir.
Q. Did you tell him you had problems with your right knee before you saw him?
A. Yes, sir.
Q. So he recommended that you undergo these injections?
A. Yes, sir.
Q. And did you do that?
A. Yes, sir.
Q. After the injections, what did he recommend you to do?
A. After a series of those injections, I wasn't getting any better, I was still experiencing the pain, his recommendation was I have knee replacement.
Q. Did he try to get workers comp at Goodyear to take care of that?
A. Yes.
Q. How long did you stay with Dr. Calfee before the claim got

denied?
A. Pretty close to a year, worker's comp was okay with me getting injections and everything, but once Dr. Calfee recommend surgery, the claim was denied.
Q. After the claim got denied, and you no longer went and saw Dr. Calfee, did you choose to go on your own?
A. Yes, sir, I did.
Q. Why did you make that decision?
A. Because I was still experiencing pain, I was not able to function in everyday life or at work to the level that I had been doing. So at that time, I knew I had to go ahead and seek medical attention on my own.
Q. Who did you go see to continue your treatment?
A. Dr. Deboer.

Worthy of note is the fact that Dr. Calfee treated Elliott as a "workers' compensation" patient from the outset of his involvement until he received a letter from the Liberty Mutual adjuster dated January 7, 2011 requesting his opinion regarding "compensability." Dr. Calfee responded by his letter dated January 18, 2010 [sic] stating his opinion that "this would not be work compensable."[5]

However, Dr. Calfee's office notes under dates of 4/29/10 and 6/8/10 would indicate otherwise where he discussed proceeding with the right knee replacement. He wrote the following into his records on 4/29/10:

ASSESSMENT: OSTEOARTHRITIS RIGHT KNEE.
PLAN: I do think she still has significant pain related to this fall at work, and I do think that her arthritis is worse since her fall. At this point, she has failed adequate conservative treatment, which I spent about 30 minutes with her today talking about a knee replacement. She does want to proceed in that direction. My plan would be to go ahead and get it precerted for a knee replacement. I am going to schedule an appointment with me in about 6 weeks. In that time, we are going to try to get it precerted to proceed with a knee replacement and then set it up at a mutually convenient time. I am going to leave her at normal duty in the meantime.

[5] Both letters are found as unnumbered items toward the very end of Dr. Calfee's medical records which are exhibited to the deposition testimony of Dr. Calfee.

It should be noted that Dr. Calfee uses the term "precert" twice in this note. This would be an obvious reference to pre-certification by Liberty Mutual for the knee replacement. Found among his records just after the 4/29/10 note is the Liberty Mutual form where pre-certification was requested and denied.

There then follows in the notes of Dr. Calfee under date of 6/8/10 when Elliott presented with a rash the following note:

> ASSESSMENT:
>
> 1. OSTEOARTHRITIS RIGHT KNEE.
> 2. PRESUMED SHINGLES. RESOLVED RIGHT KNEE.
>
> PLAN: I do not think the shingles is at all related to her workman's comp injury. She is to the point that she wants to proceed with a knee replacement. I have a note that Liberty Mutual has denied her knee replacement at this point. She is going to decide whether she wants to proceed with a knee replacement on her regular insurance or whether she wants to try to appeal Liberty Mutual for getting approval for her knee replacement. My opinion on this is I do think that she has at least exacerbated a preexisting condition, but she definitely had arthritis before this fall. She does have a meniscal tear, and there has been some discussion about doing a knee arthroscopy. Looking at her x-rays, I do not think a knee arthroscopy would alleviate her symptoms. She is going to think about this and call back and decide whether she wants to proceed with a knee replacement under her private insurance.

At this point it seems reasonably clear that Dr. Calfee was of the opinion that the knee replacement should be covered by workers' compensation. He even speaks in terms of an "appeal" of the Liberty Mutual denial of the pre-certification. All of this occurred more than six months prior to the opinion letter in January, 2011.

In considering this evidence, we are mindful of both our obligation to resolve all reasonable doubts as to causation in favor of the Employee, *Phillips*, 134 S.W.3d at 150, and of the presumption of correctness that attaches to the trial court's findings, *Skinner v. CNA Ins. Co.*, 824 S.W.2d 164, 166 (Tenn. 1992). Even taking those factors into account, the evidence in this case presents a close question. The trial court could have reasonably concluded that Employee did not sustain her burden of proof. However, the court found that

she did sustain that burden, and upon our review, we cannot find that the evidence preponderates against that finding. Considering the whole body of the evidence, including the testimony of the Employee and the office notes of Dr. Calfee as quoted here, we are compelled to a conclusion that the Trial Court appropriately found the weight of the evidence in favor of the Employee.

Conclusion

The judgment is affirmed. Costs are taxed to Goodyear Tire & Rubber Company and its surety, for which execution may issue.

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JAMES F. RUSSELL, JUDGE

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

CYNTHIA ELLIOTT v. THE GOODYEAR TIRE & RUBBER COMPANY

Chancery Court for Weakley County
No. 21640

No. W2015-01752-SC-R3-WC – Filed April 18, 2016

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 to the Appellant, Goodyear Tire & Rubber Company, and its surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM