

STATE OF TENNESSEE
IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE AT KNOXVILLE

KIMBERLEE GENTILE,

PLAINTIFF,

vs.

TENNESSEE CVS PHARMACY LLC AND
 STATE OF TENNESSEE,

DEFENDANTS.

CIVIL ACTION NO. 210683-1
 CHANCELLOR JOHN WEAVER

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND APPOINTMENT
FOR SPECIAL THREE-JUDGE PANEL

Comes the Plaintiff, Kimberlee Gentile, by and through her attorney, and pursuant to Rule 15 of the Tennessee Rules of Civil Procedure prior to any responsive pleading having been filed and in accordance with Rule 54 of the Rules of the Supreme Court and would amend her Complaint to add the State of Tennessee as a Defendant and to challenge portions of the Tennessee Workers' Compensation Reform Act of 2013 and the original Tennessee Workers' Compensation Act found at T.C.A. 50-6-101 et seq. as follows:

INTRODUCTION

1. The Plaintiff would show unto the Court that pursuant to Rule 24.04 of the Tennessee Rules of Civil Procedure this matter is being filed as a Complaint for a Declaratory Judgment which extends to any type of action as in this case such that if the Attorney General for the State of Tennessee finds that the state's interest so requires, he will be of position to intervene or take other appropriate action. This cause of action is also being

filed pursuant to Rule 54 of the Rules of the Supreme Court to challenge the constitutionality of the Tennessee Workers' Compensation Act and the Tennessee Workers' Compensation Reform Act of 2013 and includes a claim for Declaratory Judgment naming the State of Tennessee as a Defendant in this cause of action.

2. The Plaintiff would show unto the Court that when the original Tennessee Workers' Compensation Act was passed by the Tennessee General Assembly, the original Act did not close to Tennessee's employees the doors to the Courts that were open and continue to be open prior to and after the passage of the original Tennessee Workers' Compensation Act. The Plaintiff would show unto the Court that through the enactment of Public Chapter 289 (2013), the Tennessee General Assembly has now effectively closed the Trial Court system, as previously established both at Common Law and by statute, to injured workers and employees such that Article I, Section 17 of the Tennessee Constitution has been violated. In the case of Scott v. Nashville Bridge Company, 143 Tenn. 86, 223 S.W. 844 (Tenn. 1919), the Tennessee Supreme Court reiterated the principle, as long established by our Tennessee Constitution, that all Courts shall be open. The Plaintiff would urge this Court to hold that the Tennessee General Assembly should be prohibited by Article I, Section 17 of the Tennessee Constitution from denying injured workers or employees their day in a Trial Court.

3. The Plaintiff would further show unto the Court that the Tennessee Workers' Compensation System, as amended and adopted by the Tennessee General Assembly through the passage of Public Chapter 289 (2013) and more specifically, T.C.A. §50-6-

237 and the composition of the Court of Workers' Compensation Claims and the Division of Workers' Compensation is not a Judicial Court. The Workers' Compensation Judges are Executive service employees as described in T.C.A. §50-6-228(a)(1) and have no Judicial power such that it could interpreted as a Court, nor do they fit within the scheme of our Tennessee Constitution which provides that Judicial powers rest within a Court, not the Executive or Legislative branches of government.

4. The Plaintiff would further show unto the Court that the Tennessee General Assembly may not attempt to exercise Judicial power by enacting a statute that effectively removes from the Judiciary its authority to interpret and apply laws. See Article II, Tennessee Constitution, Sections 1 and 2, and Article VI of the Tennessee Constitution, Section 1.
5. The Plaintiff would further show unto the Court that Article II, Section 1 of the Tennessee Constitution, establishes a separation of powers and branches of the Tennessee State Government and provides as follows:

“The powers of Government shall be divided into three distinct departments: the Legislative, Executive, and Judicial.”

Article 2, Section 2 of the Tennessee Constitution, which deals with the separation of powers in persons belonging to different branches also establishes the following:

“No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases herein directed or permitted.”

More importantly, Article 6, Section 1 which deals with the enumeration of the Courts in the State of Tennessee provides as follows:

“The Judicial power of this State shall be vested in one Supreme Court and in such Circuit, Chancery, and other inferior Courts as the Legislature shall from time to time, ordain and establish; in the Judges thereof and in justice of the peace. The Legislature may also vest such jurisdiction in corporation courts as deemed necessary. Courts to be holding by Justices of the Peace may also be established.”

6. The Plaintiff would show unto the Court that true Courts derive their subject matter jurisdiction from the Constitution of Tennessee or from a Legislative Act, and Courts that are not of record, should not exercise jurisdiction powers that have not been conferred directly on them expressly or by necessary implication. The Plaintiff would request this Court to declare that Courts of Workers' Compensation are not “Courts of Record” within the meaning of Article 6, Section 1 of the Tennessee Constitution. Courts of Record must proceed according to the Courts of Common Law without the aid of a statute. The Plaintiff would show unto the Court that the legal system in the State of Tennessee is based on the philosophy that the true facts of a given situation, and hence justice, will emerge if parties in a court action act as adversaries, rather than cooperative participants. The theory is that if each side vigorously advances its own version of the facts, an

impartial third person or groups of persons (Judge or jury) will sift out the truth. A true trial may be before a Judge only or before a jury. A bench trial is another term for a trial by a Judge only. According to the Tennessee Supreme Court Administrative Office of the Courts, the Judicial Branch, one of the three basic divisions of state government, serves as a check on the powers of both Legislative and Executive Branches. Through the power of Judicial review, Courts rule on the constitutionality of legislation passed by the General Assembly and consider the legality of Administrative policies and regulations.

7. The Plaintiff would further show unto the Court that Tennessee's Judicial System is derived from a Constitutional foundation: "The Judicial power of this State shall be vested in one Supreme Court and in such Circuit, Chancery, and other inferior Courts as the Legislature shall from time to time ordain and establish pursuant to Article 6, Section 1 of the Constitution of the State of Tennessee. The Tennessee Supreme Court is the highest court of the State of Tennessee. The intermediate Appellate Courts consist of the Court of Appeals and Court of Criminal Appeals, which hear civil and criminal cases appealed from Trial Courts. Tennessee Trial Courts, according to the Tennessee Supreme Court Administrative Office of the Courts, include Chancery, Criminal, Circuit, and Probate Courts. Judges in these courts are chosen by popular election within a Judicial District. The fourth level of courts in Tennessee is composed of the courts of limited jurisdiction: General Sessions, Juvenile, and Municipal Courts. These Courts are funded by their respective counties. The Judges of the Tennessee Supreme Court, Court of Appeals, and Court of Criminal Appeals are elected on a "yes, no" ballot every eight years. When a vacancy occurs, the fifteen-member Judicial selection commission

interviews applicants and recommends three candidates to the Governor, who appoints a new Judge to serve until the next August election. By state law, Judges on the three courts must be evaluated every eight years.

8. The Plaintiff would show unto the Court that while T.C.A. §50-6-225 arguably allows a review from a judgment of the Court of Workers' Compensation Claims by the Tennessee Supreme Court, there is no longer a trial involved in the initial adjudication of a workers' rights or an employer's right such that the courts of this state are no longer open for an adjudication of rights between an employer, its Workers' Compensation carrier and/or its employee.

9. The Plaintiff would show unto the Court that by the creation of a Court of Workers' Compensation, through the Executive Branch, that the Tennessee General Assembly, has in essence closed the court doors to every injured worker as well as every employer in the State of Tennessee except for what could be called a perfunctory review by the Tennessee Supreme Court pursuant to T.C.A. §50-6-225.

10. The Plaintiff would show unto the Court that the basis for Tennessee's Workers' Compensation Law originally rested upon the economic principle that those persons who enjoy the product of a business, whether it be in the form of goods or services, should ultimately bear the costs of injuries or deaths that are incidental to the manufacturing, preparation, or distribution of a product or service. This principle has always been the case in the State of Tennessee with reference to the wear and tear of a building as well as

capital outlay for machinery and equipment, which have always been used to process and distribute all types of industrial products. The Plaintiff would show unto the Court that in the marketplace, breakage of every sort is usually anticipated by the producer, and the cost is considered when a manufacturer or business fixes the price of a commodity, or the service produced. These costs, until the passage of the Tennessee Workers' Compensation Reform Act of 2013, were anticipated costs for doing business in the marketplace in the State of Tennessee, without any reference to whether or not the loss would be regarded as a result of fault on the part of management or fault of the employee or employer. If costs are predictable incidents of the operation of a business, then sound business judgment in the marketplace demands that these costs be included as an element for the price of that business and not a cost for working men and women or the tax payers of the State of Tennessee. Additionally, employers should anticipate that the risk and/or cost of doing business with regard to work-related injuries and/or contraction of occupational diseases should be a matter for which the employer has obtained insurance coverage through a Workers' Compensation carrier such as the Defendant in the instant case.

11. The Plaintiff would show unto the Court that the 2013 Tennessee Workers' Compensation Reform Act was written by out-of-state consultants and passed with little to no debate, reduced benefits to injured workers by 60%, and created a governmental bureaucracy and a greater tax burden on the State of Tennessee taxpayers, and shifted the Administration of Workers' Compensation Claims to the taxpayers of the State of Tennessee. The Plaintiff would show unto the Court that the expense for administering Workers'

Compensation claims should, however, be considered to be more properly a cost of doing business in the State of Tennessee to be paid by the manufacturer or purchaser of the product or the service of the business in the ordinary chain of commerce dependent upon the risks incidental to that business and/or as a risk for which the business has purchased Workers' Compensation insurance coverage rather than the taxpayers for the State of Tennessee as a matter of public policy and pursuant to Tennessee's Open Court's Doctrine. If an employer such as the Defendant has provided Workers' Compensation to an employer, then those costs and the costs for administering those claims should be borne by the Workers' Compensation insurance carriers and not the taxpayers for the State of Tennessee.

12. The Plaintiff would further show unto the Court that the Judicial power of the State of Tennessee lies within a Judicial department composed of the Tennessee Supreme Court and inferior courts under Article VI of the Tennessee Constitution. Article II of the Tennessee Constitution, more specifically Section 1, provides that the powers of the government of the State of Tennessee shall be divided into three distinct departments: The Legislative, the Executive, and the Judicial Branches of government. The Tennessee General Assembly may not attempt to exercise Judicial power by enacting a statue that effectively removes from the Judiciary its authority to interpret and apply the laws pursuant to Article II, Section 1 and 2 of the Tennessee Constitution and Article VI, Section 1. A person belonging to one of each of these departments shall not exercise any of the powers properly belonging to either of the others, except in cases herein directed or permitted pursuant to the Tennessee Constitution, Article II, Section 2. The power of the

Legislative Branch of government over the Judicial Branch must conform to Constitutional limitations since the Tennessee Constitution does not reserve to the Legislature all right to deal with other branches of government subject to exceptions, but expressly prohibits any branch from exercising the power of the other branch except in cases expressly permitted pursuant to Article II, Section 1 and 2 of the Tennessee Constitution, nor does the Legislature have any right to decide individual rights.

13. The Plaintiff would show unto the Court that with the passage of the Tennessee Workers' Compensation Reform Act of 2013, the doctrine of liberal construction in favor of the employee was abolished and has been replaced with a mandate to construe the law of "fairly and impartially, and not "in a manner favoring either the employee or employer." The 2013 amendment of T.C.A. §50-6-116 effective July 1, 2014, rewrote the previous law that read as follows: "The rule of Common Law requires strict construction of the statutes and derogation of Common Law, shall not be applicable to this chapter, but this chapter is declared to be a remedial statute which shall be given an equitable construction by the Courts to the end that the objects and purposes of this chapter may be realized and attained."
14. The Plaintiff would show unto the Court that T.C.A. §50-6-116 was originally a remedial statute intended to charge industry with the responsibility of industrial accidents by requiring compensation for the benefit of injured workers, or in the case of their death by accident, to their dependents so as to relieve society of that obligation, and the law was to be broadly construed to accomplish the ends intended. The courts, in giving the

compensation statute an equitable construction, were required, at the same time, to be careful not to enter the field of legislation. Unfortunately, the Tennessee General Assembly with the amendment of T.C.A. §50-6-116, has now allowed the passage of legislation and the enactment of rules, either through the interpretation of evidence or otherwise, that strike at the very heart of what was previously a court's exercise of Judicial powers. A determination of what evidence is relevant, either logically or legally, to a fact at issue in litigation is a power that, until now, has been entrusted solely to the care and exercise of the Judiciary pursuant to Article II, Section 2 of the Tennessee Constitution, and not the Legislative Branch, nor the Executive Branch.

15. The Plaintiff would show unto the Court that the Legislative and Executive Branches should not usurp a Court's authority to determine which witnesses to believe or not believe. Except in the most obvious, simple, and routine cases, a Workers' Compensation Claimant has always been required to establish by expert medical evidence the causal relationship between his or her disability complained of and the employment activity or condition from which they suffer. The admissibility of scientific evidence has long been governed principally by the Tennessee Rules of Evidence, Rule 702, and the Judicial Branch of government, not the Executive Branch.

16. The Plaintiff would show unto the Court that neither the Tennessee General Assembly, nor the Executive Branch should be allowed to usurp the Tennessee Supreme Court's authority to govern the Rules of Evidence in the State of Tennessee, nor should the Legislature or Executive Branch invade the province of the Court as to which witness is

more credible or believable, whether it was for the employer or the employee, including authorized treating physicians.

17. The Plaintiff would show unto the Court that there are public policy concerns regarding the validity of the above-described statutes which also interfere with an employee and an employer's rights to due process under the Tennessee Constitution, Article II, Section 1 and 2 of the Tennessee Constitution which provides for the separation of powers and separation of branches of government such that pursuant to Article II, Section 2, no person or persons belonging to one of these departments should exercise any of the powers belonging to the others.

18. The Plaintiff would show unto the Court that Tennessee's Workers' Compensation Act of 2013 and more specifically T.C.A. §50-6-237, which mandates that the Executive Branch appointed Workers' Compensation Judges have original and exclusive jurisdiction over all contested claims for Workers' Compensation benefits after July 1, 2014, should be declared a violation of the Separation of Powers Doctrine, and this Court should hold that this statute denies the Plaintiff as an employee of her rights to due process of law. The administrative system, as passed by the Tennessee General Assembly, violates the Plaintiff's right to procedural due process by placing exclusive and original jurisdiction in the Workers' Compensation division of the Tennessee Department of Labor and Workforce Development in the Executive Branch of government. The Plaintiff contends that this system is constitutionally infirmed because it violates the principle of fair treatment guaranteed by the Constitution of the State of Tennessee and causes the

Executive Branch of government to clash with the Judicial Branch. The Plaintiff contends that the overall problems with the Tennessee Workers' Compensation system, as changed by the 2013 Reform Act, is that it authorizes the issuance of orders for assistance by Executive Branch employees pursuant to T.C.A. §50-6-238 and grants the Executive Branch the power to determine the issues of fact and law as they arise in a controversy before them. Until 2013, this role had traditionally been the role of the Judiciary. The Plaintiff contends that this process constitutes an unconstitutional invasion of the Judiciary's power to find facts. With the passage of T.C.A. §50-6-238, the Legislature has predetermined or mandated an adjudication of issues of fact and thereafter allows Workers' Compensation Judges who are Executive Branch employees, to determine the issues of credibility or evidence outside of the Judicial Branch of government, but by the Executive Branch, in a system which does not require that a record of the proceedings be maintained.

19. In the instant cause of action, the Plaintiff challenges the administrative system which is pre-engineered to control the administration of benefits from the date of injury through the awarding of any claim for disability benefits. The Plaintiff claims that the overall administration of benefits as devised by the Tennessee General Assembly pursuant to the Tennessee Workers' Compensation Reform Act of 2013 is a violation of the fundamental right of access to our courts, and as a result of the holding of the U.S. Supreme Court in the case of Securities and Exchange Commission v. Jarkesy et al, ___ U.S. ___, No. 22-859, 2024 U.S. Lexis 2847, decided June 27, 2024, the Plaintiff invites this Court to revisit the case of Scott v. Nashville Bridge Company, 143 Tenn. 86, 223 S.W. 84 (Tenn.

1920) and to hold in the instant case that where the statutory claim for a work injury is in the nature of a Common Law cause of action, the Plaintiff is entitled to a trial by jury in accordance with Article I, Section 6 of the Tennessee Constitution and the Seventh Amendment of the United States Constitution. The Plaintiff requests this Court to find that the public rights exceptions do not apply automatically when the Tennessee General Assembly has assigned a matter to an agency as in the instant case for adjudication. The Plaintiff requests this Court to recognize that when the original Tennessee Workers' Compensation Act was passed by the Tennessee General Assembly, the original Act did not close to Tennessee employees the door to our Judicial Tribunals nor to Article VI Courts that were open and continued to be open prior to and after the passage of the original Tennessee Workers' Compensation Act. The Plaintiff contends that through the enactment of Public Chapter 289(2013), the Tennessee Workers' Compensation Reform Act, the Tennessee General Assembly has now effectively closed the Trial Court system as previously established both at Common Law and by statute to injured workers and employers such that Article I, Section 17 of the Tennessee Constitution has been violated. In the case of Scott v. Nashville Bridge Company, the Tennessee Supreme Court reiterated the principle which has long been established by the Tennessee Constitution that all courts shall be open. The Plaintiff would urge this Court in accordance with the United States Supreme Court case of SEC v. Jarkesy, Supra to revisit Scott v. Nashville Bridge Company and to recognize that the access to our courts in accordance with Article I, Section 17 of the Tennessee Constitution is a fundamental right. The Plaintiff requests this Court to declare that based not only upon the Common Law for the State of Tennessee, but the Tennessee Constitution, which is Tennessee's Supreme Law of the

Land, that the Plaintiff is entitled to have her claim for work injuries and/or occupational diseases determined by a member of the Judicial Branch of government and not the Executive Branch of government which is now required by the 2013 Workers' Compensation Reform Act.

20. The Plaintiff contends that to allow a presumption of correctness to the Executive Branch of government or to defer to the Executive Branch of government such as the Bureau of Workers' Compensation is not only a violation of public policy as set forth in T.C.A. Section 50-6-116, but is now a violation of the more recent public policy and T.C.A. Section 4-5-326 which in essence codifies the most recent United States Supreme Court case of Loper Bright Enterprises v. Raimondo et al, ___ U.S. ___ U.S. Lexis 2882, decided June 28, 2024. The Plaintiff would show unto the Court that her challenge to the Tennessee Workers' Compensation Reform Act on the basis of a violation of the Open Courts Doctrine as well as other issues hereinafter described are matters of first impression that have not been established by precedent in a published opinion by the full Tennessee Supreme Court.

21. The Plaintiff contends that her claims are being filed for the expressed purpose of reversing existing precedent, law, or regulations, and the matters which she requests this Court to address are matters of first impression challenging the overall composition of the Court of Workers' Compensation Claims as well as other claims which are enumerated herein.

22. The Plaintiff would further show unto the Court that the offset for Social Security retirement benefits and T.C.A. Section 50-6-207(4) violates both the Tennessee and the United States Constitution by discriminating against the Plaintiff on the basis of age and whether T.C.A. Section 50-6-207(4) violates the Uniform Operation of Laws provision of Articles XI, Section 8 of the Tennessee Constitution and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution is likewise a matter of first impression and/or in the alternative is a matter which this Court needs to readdress as a result of a previous holding by the Tennessee Supreme Court in the case of Vogel v. Wells Fargo Guard Services, 937 S.W.2d 856 (Tenn. 1996). The Plaintiff is requesting that this Court revisit this case and hold that Workers' Compensation benefits are wage-loss replacement income, while Social Security retirement benefits are not duplicative of Workers' Compensation benefits, but serve other important purposes. The Plaintiff requests that this Court hold that Social Security retirement benefits provide the recipient with supplemental income after he or she contributes to the program throughout his or her working life. The Plaintiff urges this Court to find that it is not rational to offset Social Security old age retirement benefits against Workers' Compensation disability benefits.

23. Another issue of first impression for this Court to determine is whether T.C.A. Section 50-6-204 violates Article I, Section 22 of the Tennessee Constitution by allowing the State of Tennessee, insurance carriers, and employers to control and monopolize medical services and/or whether the monopolization of medical services through the Tennessee Workers' Compensation Reform Act of 2013 should be held void, unreasonable, and oppressive.

24. As a matter of first impression, the Plaintiff is challenging the cap on attorney fees for injured workers wherein she contends that an award for attorney fees pursuant to T.C.A. Section 50-6-226(d)(1)(B) is discretionary and subject to review only under an abuse of discretion because the process for obtaining attorney fees has now been granted to the Executive Branch of government and/or the Court of Workers' Compensation Claims where the approval of attorney fees should be made by an Article VI Judge or Judicial Tribunal as a part of the Separation of Powers Doctrine as recognized in the State of Tennessee. The Plaintiff contends that the Court of Workers' Compensation Claims abuses its discretion when it causes an injustice by applying an incorrect legal standard, reaches an illogical result, resolves a case on an erroneous assessment of the evidence, or relies on reasoning that causes an injustice.

25. The Plaintiff contends that since the passage of the Tennessee Workers' Compensation Reform Act of 2013 pursuant to T.C.A. Section 50-6-226, fees of attorneys for services to employees are now subject to the approval of a Workers' Compensation Judge, an Executive Service employee before whom a Workers' Compensation claim is pending and that no attorney fees can be charged to employees in excess of 20% of the amount of recovery or award to be paid by the party employing the attorney. Contrary to previous established law, instead of attorney fees being approved by an Article VI Judge or a member of the Judicial Branch of Government, the Bureau of Workers' Compensation, an Executive Department Service Employee, shall deem the attorney fees to be reasonable if the fee does not exceed 20% of the award to the injured worker, or in cases governed by T.C.A. Section 50-6-207(4), 20% of the first 450 weeks of the award. While attorney

fees for employers, however, are not subject to review for the reasonableness of the fee nor are they required to be approved by the Workers' Compensation Judge, an Executive Service Employee, until those services reach a threshold in excess of \$10,000. In cases that proceed to trial pursuant to T.C.A. Section 50-6-226(a)(2)(B), an employee's attorney is required to file an application for approval for proposed attorney fees by the Executive Branch. When the award of attorney fees for employers exceed \$10,000, then and only then is the Court of Workers' Compensation Claims required to make specific findings as to factors that justify the fee as provided by Tennessee Supreme Court Rule 8, RPC 1.5. In essence, the Plaintiff intends as a matter of first impression that T.C.A. Section 50-6-226 which requires a deferral to the Executive Branch of Government for the approval of attorney fees, is in violation of the Separation of Powers Doctrine as long recognized in the State of Tennessee.

PARTIES

26. The Plaintiff at the time of the filing of this Amended Complaint is a citizen and resident of Knox County, Tennessee.

27. The Defendant, Tennessee CVS Pharmacy LLC, is a corporation with offices at 9435 South Northshore Drive where the Plaintiff was previously employed, but the Defendant has previously been served through its designated agent, CT Corporation System, at 300 Montvue Road Knoxville, Tennessee 37919 pursuant to Rule 4 of the Tennessee Rules of Civil Procedure.

28. The added Defendant, the State of Tennessee, is being made a party to this cause of action pursuant to Rule 54 of the Rules of the Supreme Court, and contemporaneously with the filing of this Amended Complaint, the Plaintiff is also giving notice to the Attorney General of the State of Tennessee, Jonathan Skrmetti, that the validity and/or constitutionality of various statutes and regulations of the Workers' Compensation laws for the State of Tennessee as provided in Section 50-6-101 et seq of the Tennessee Code Annotated are being drawn into question. Notice is being provided to the State of Tennessee through the office of the Attorney General, Jonathan Skrmetti, at his office at 425 5th Avenue North, Second Floor Cordell Hull Building, P.O. Box 20207 Nashville, Tennessee 37202 or by email at Jonathan.skrmetti@ag.tn.gov and Assistant Attorney General, Eric W. Donica at Eric.donica@ag.tn.gov.

JURISDICTION

29. The Plaintiff originally brought this cause of action pursuant to Tennessee's Declaratory Judgment Act which can be found at T.C.A. Section 29-14-101 et seq. By adding the State of Tennessee as a party, the Plaintiff now challenges the constitutionality of certain portions of the Tennessee Workers' Compensation Reform Act and the original Tennessee Workers' Compensation Act pursuant to Rule 54 of the Rules of the Tennessee Supreme Court. The Court of Workers' Compensation Claims does not have the authority or jurisdiction to determine whether a statute governing its existence is valid or invalid under the Tennessee Declaratory Judgment Act. The Court of Workers' Compensation Claims is not a Court of Record and Administrative Tribunals in Tennessee do not have the power to address facial Constitutional challenges to statutes.

30. The Plaintiff also brings this cause of action to declare certain rights and responsibilities between the Plaintiff and the Defendants. The Plaintiff brings this cause of action as a Declaratory Judgment action as well as a cause of action under Rule 54 of the Rules of the Tennessee Supreme Court to challenge the constitutionality and legality of certain portions of Public Chapter 289 (2013) and urges that certain portions of the Tennessee Workers' Compensation Reform Act of 2013 and of the original Tennessee Workers' Compensation Act be declared invalid and/or unconstitutional.

31. The Plaintiff would show unto the Court that pursuant to T.C.A. §50-6-239(h) and except as provided in T.C.A. §50-6-118, which simply governs the assessment of penalties, no Order issued by a Workers' Compensation Judge shall be subject to Judicial review pursuant to the Uniform Administrative Procedures Act compiled in Title 4, Chapter 5 such that T.C.A. §50-6-239(h) should be held unconstitutional in as much as the Plaintiff no longer has a right to have his claims to be Judicially determined, and the Plaintiff is deprived of the right to have his case heard by a Judge in a court of record as opposed to an administrative executive branch proceeding. By depriving the Plaintiff of her rights to Judicial review as well as the right to file a cause of action before the Knox County Chancery Court, or the Knox County Circuit Court, the Plaintiff has no adequate remedy to secure a Judicial determination of constitutional issues except before this Court.

32. The Plaintiff would further show unto the Court that pursuant to the case of Richardson v. Tennessee Board of Dentistry, 913 S.W.2d 446 (Tenn. 1995), the Tennessee Supreme Court has held that the facial constitutionality of a statute may not be determined by an

Administrative Tribunal in a contested case proceeding such as the claims which the Plaintiff has for Workers' Compensation benefits as in the instant case. While an Administrative Agency may address a claim, the agency's procedure is constitutionally deficient because the State Constitution forbids encroachment by one department of government upon the powers or functions of another. The Legislative action vesting Executive Branch Agencies such as the Bureau of Workers' Compensation of the Tennessee Department of Labor and Workforce Development to determine the constitutionality of a statute cannot be accomplished. This would violate the Separation of Powers Doctrine pursuant to the Tennessee Constitution Article II Section 2 in accordance with the case of Richardson v. Tennessee Board of Dentistry, 913 S.W.2d 446 (Tenn. 1995). The facial constitutionality or an as-applied constitutionality of a statute should not be determined by an administrative tribunal such as the Court of Workers' Compensation in an administrative proceeding. An administrative agency is a creature of the Legislature. While a Court of Worker's Compensation under the Bureau of Workers' Compensation and the Tennessee Department of Labor may have Judicial characteristics and may be required to perform quasi-Judicial functions, the Tennessee Court of Workers' Compensation as an Executive Branch Administrative Agency is not a part of the Judicial Branch of Government. See Plasti Line Inc. v. Human Rights Commission et al., 746 S.W.2d 691, 694 (Tenn. 1988). As a result, the Legislature should not confer upon an agency such as the Court of Workers' Compensation the power to determine the constitutionality of a statute. See Hoover Motor Express Co., Inc. v. Railroad and Public Utilities Commission, 195 Tenn. 594, 261 S.W.2d 233, 238 (Tenn. 1953). Nor should an agency such as the Bureau of Workers' Compensation of the Tennessee Department of

Labor and the Court of Workers' Compensation assume that power. That power rests with the Judiciary as in the instant cause of action, the Chancery Court for Knox County, Tennessee. See Tennessee Small Schools Systems v. McWherter, 851 S.W.2d 139, 148 (Tenn. 1993). Thus, an agency such as the Bureau of Workers' Compensation or the Court of Workers' Compensation which is a part of the Executive Branch, if it had the authority to determine the constitutionality of the Legislation empowering the agency to act, would violate the Doctrine of Separation of Powers. An administrative agency, board, commission, or administrative law Judge appointed through the Executive Branch acting in a contested case hearing therefore, should have no authority to resolve a facial challenge or an as-applied challenge to the constitutionality of a statute such that the Plaintiff's remedy is to file her claims challenging the Workers' Compensation Act on a facial basis and/or procedurally as it applies to the Plaintiff.

33. The Plaintiff would show unto the Court that Public Chapter 289 (2013) which became effective July 1, 2014, creates pursuant to T.C.A. §50-6-237, a Court of Workers' Compensation in the Bureau of Workers' Compensation of the Tennessee Department of Labor and Workforce Development. The Tennessee Department of Labor and Workforce Development is otherwise controlled entirely by the Executive Branch of government of the State of Tennessee and the Executive Branch of government for the State of Tennessee now has original and exclusive jurisdiction over all contested claims for Workers' Compensation benefits when date of the alleged injury is on or after July 1, 2014. T.C.A. §50-6-237 provides that the Administrator of the Bureau of Workers' Compensation for the Tennessee Department of Labor and Workforce Development, a

division of the Executive Branch of Government for the State of Tennessee, shall have the sole administrative authority over what is now referred to as a Court of Workers' Compensation Claims. This entity is no longer a Judicial tribunal, but grants the Administrator the authority to appoint and remove Workers' Compensation Judges. These courts are not Courts of Record, as Courts of Record have long been recognized pursuant to the Common Law for the State of Tennessee. Pursuant to T.C.A. §50-6-237, the Administrator of the Division of Workers' Compensation for the Tennessee Department of Labor and Workforce Development, a division of the Executive Branch of Government of the State of Tennessee has promulgated rules and regulations consistent with Public Chapter 289, all of which are incorporated by reference herein.

34. The Plaintiff would show unto the Court that in Common Law jurisdictions such as the State of Tennessee, a Court of Record is a Trial Court in which a court clerk or court reporter take down a record of proceedings. In the instant case and with regard to the Court of Workers' Compensation, there is no requirement that a court reporter take down a record of the proceedings. That a written record (and all other evidence) is preserved at least long enough for all appeals to be exhausted or for some further period of time provided by law. Most Courts of Record have rules and procedures that require that most parties be represented by counsel. Additionally, pursuant to T.C.A. §50-6-238, it is clear that Workers' Compensation Judges as the same are enumerated in the Tennessee Workers' Compensation Reform Act of 2013 are not members of the Judicial Branch of Government in the State of Tennessee, but are exclusively Executive service employees of the State of Tennessee as defined in Section 8-30-103 of the Tennessee Code

Annotated pursuant to T.C.A. §50-6-238. It is also clear that pursuant to T.C.A. §50-6-238(c) that any complaints regarding the conduct of Workers' Compensation Judges are not governed by the Judicial Branch of Government, but any complaints about the Chief Judge, or any of the inferior Workers' Compensation Judges, are to be made solely to the Administrator of the Division of Workers' Compensation, Tennessee Department of Labor and Workforce Development, solely and entirely under the Executive Branch of government for the State of Tennessee.

35. More specifically, Tennessee's Declaratory Judgment Act at T.C.A. Section 29-14-102 dealing with general powers of the courts specifies that only Courts of Record such as the Knox County Chancery Court have the power to declare rights, status, and other legal relations other the Declaratory Judgment Act. The Court of Workers' Compensation Claims is not a Court of Record as it is an Administrative Tribunal created by the Legislature with specific jurisdiction over Workers' Compensation Claims under T.C.A. Section 50-6-237. Therefore, any facial Constitutional challenges or an as-applied challenge to a statute governing the existence of the Court of Workers' Compensation Claims should be brought in the Knox County Chancery Court pursuant to T.C.A. Section 29-14-102 and/or pursuant to Rule 54 of the Rules of the Supreme Court Section 1(B), a cause of action can include a claim for Declaratory Judgment.

36. The Plaintiff would show unto the Court that under the holding of Richardson v. Tennessee Board of Dentistry, 913 S.W.2d 446 (Tenn. 1995), administrative agencies such as the Bureau of Workers' Compensation, Tennessee Department of Labor and

Workforce Development, and the Court of Workers' Compensation have no authority under the Tennessee law to consider a facial constitutional challenge nor a constitutional challenge as applied procedurally to the Plaintiff. An agency such as the Bureau of Workers' Compensation and the Court of Workers' Compensation must refuse to address this constitutional challenge when raised in a contested case proceeding. In the instant case, there is reason to require the Plaintiff to raise a constitutional challenge before a Court of Workers' Compensation which lacks the powers to resolve the above-described issues. As the Tennessee Supreme Court held in Richardson, the law should not require the Plaintiff to perform a useless and futile act. The Plaintiff is entitled to file her complaint for a Declaratory Judgment with this Court. The Plaintiff may seek a Judicial review of the issues for which the Bureau of Workers' Compensation and the Court of Workers' Compensation is without authority to consider. Additionally, the Richardson case holds that a party may challenge the constitutionality of a statute regardless of whether that challenge was raised at an agency level.

37. The Plaintiff would show unto the Court that a review of the Constitutional issues raised at the Trial Court level ensures that Constitutional issues are decided by legally trained Judges and a Judiciary with the legal knowledge to resolve those issues. The failure of the Plaintiff to raise the above-described Constitutional issues before the Executive Branch in the Court of Workers' Compensation Claims should not preclude the Plaintiff from raising these issues for the first time in the instant case for Judicial review. Additionally, since T.C.A. §50-6-239(h) precludes the Plaintiff from seeking Judicial review under T.C.A. §4-5-223 before the Davidson County Chancery Court, the Plaintiff

has no adequate remedy to challenge these constitutional issues except through Judicial review by this Court which is the jurisdiction and venue for the Plaintiff and the Defendant insurance carrier for the Plaintiff's employer and the county in which the Plaintiff's injuries occurred.

38. The Plaintiff would show unto the Court that an actual and bona fide controversy exists between the parties as to their legal relations in respect to the Plaintiff's Workers' Compensation claims and the rights of the parties under the Tennessee Workers' Compensation Reform Act of 2013 such that the rights of the parties can only be properly determined by a Declaratory Judgment in this Court, nor should the Plaintiff be left without a remedy.

39. In the event this Court determines that the Plaintiff's cause of action should not be determined under the Tennessee Workers' Compensation Act, and this Court finds the Tennessee Workers' Compensation Reform Act to be unconstitutional, then alternatively, the Plaintiff would request this Court to find that the Plaintiff should be entitled to recover for a cause of action under the principles of Common Law and/or in a trial before this Court in as much as the very essence of civil liberty consists of the right of every individual to claim protection of a loss whenever he receives an injury. Marbury v. Madison, 5 U.S. (1 Cranch 137, 163) (1803).

VIOLATION OF TENNESSEE'S OPEN COURT'S SYSTEM

40. The Plaintiff would further show unto the Court that portions of Public Chapter 289 (2013) and more specifically, T.C.A. §50-6-237, T.C.A. §50-6-238, T.C.A. §50-6-217, T.C.A. §50-6-218, and T.C.A. §50-6-239 should be declared unconstitutional and a violation of the Tennessee Constitution which is the Supreme Court of the law of the land in the State of Tennessee and more specifically, Article I, Section 17, which hold: “That all Courts shall be open; and every man for an injury done in his lands, goods, person, or reputation, shall have the remedy by due course of law, and right and justice administered without sale, denial, or delay.” This section of Tennessee’s Constitution, which is part of the State’s Declarations of Rights, is also commonly referred to Tennessee’s Open Court’s Clause or Doctrine. More specifically, the Plaintiff would show unto the Court that T.C.A. §50-6-239(d) deprives the Plaintiff from recovering specifically temporary total disability benefits on an expedited basis in as much as until the Plaintiff has passed through a dispute resolution mechanism, she is deprived of an expedited hearing until a dispute certification notice has been issued by a Workers’ Compensation mediator who is not required to be an attorney, and only at the Judge’s discretion may the expedited disputes over issues provided in the Dispute Certification Notice concerning the provision of medical benefits or temporary disability benefits be heard on an expedited basis. In the instant case, because the Plaintiff suffered a physical injury and also suffered a mental injury that arose primarily out of a compensable physical injury, the Plaintiff is being deprived of temporary total disability benefits by the Defendant despite the fact that the Plaintiff is under active medical care for her emotional injuries.

41. The Plaintiff would show unto the Court that it has long been established since 1919 that injured workers and employers are entitled to the benefit of Article I, Section 17 of the Tennessee Constitution. Article I, Section of the Tennessee Constitution which is the Supreme Court of the law of the land of the State of Tennessee reads as follows:

“That all Courts shall be open; and every man for an injury done him in his lands, goods, person, or reputation, shall have a remedy by due course of law, and right injustice administered without sale, denial, or delay.” See Tennessee Supreme Court case of Scott v. Nashville Bridge Company, 143 Tenn. 86, 223 S.W. 844 (Tenn. 1920).

42. The Plaintiff would show unto the Court that until the passage of the Tennessee Workers’ Compensation Act, an injured worker had the right to a trial by jury, or if they waived the right to a trial by jury, a trial by the Judicial Branch of government. When the original Tennessee Workers’ Compensation Act was passed, Section 32 of the Act provided that “The cause shall be heard by the Circuit Judge without a jury and other non-jury civil cases are heard in the Circuit Court. See Scott v. Nashville Bridge Company Id at 852.

43. The Plaintiff contends that the 2013 Tennessee Workers’ Compensation Reform Act and more specifically, T.C.A. §50-6-237, and the establishment of the Court of Workers’ Compensation under the division of Workers’ Compensation for the Tennessee Department of Labor and Workforce Development, a part of the Executive Branch, not a Judicial Court, is in violation of the Plaintiff’s true and inherent right to have her case

determined by a Trial Court of record, which has long been established by the Common Law of the State of Tennessee and the Tennessee Constitution itself.

44. The Plaintiff would show unto the Court that the supreme law of the State of Tennessee, the Tennessee Constitution, has long held that the principles of the Magna Carta establish that a trial by a Judicial tribunal was a fundamental right in the State of Tennessee. The Magna Carta signed by King John of England, more specifically Article 39 of the Magna Carta, provided as follows:

“No free man shall be captured, imprisoned, or dissolved of his freehold or his liberties or his free customs, will be outlawed or exiled or in any way destroyed, nor will we proceed against him by force or proceed against him by arms, but by lawful judgment of his peers or by the law of the land.”

The Plaintiff would show unto the Court that the evolution of the trial by jury and/or trial by the law of the land was firmly ingrained and established by the Constitution for the United States in 1789 and by the passage of the Bill of Rights by the Seventh Amendment to the United States Constitution. Then on February 6, 1796, the Tennessee Constitution provided in Article I, Section 6 the following:

“That the right of trial by jury shall remain inviolate, and no religious or political tests shall be required as qualification for juries.”

45. The Plaintiff would show unto the Court that with this progression of a trial by jury for suits at Common Law, the right to a suit for personal injury and damages were ingrained in the Common Law system for the State of Tennessee.
46. The Plaintiff would request this Court to declare that based not only upon the Common Law for the State of Tennessee, but the Tennessee Constitution which is Tennessee's supreme law of the land, that the Plaintiff is entitled to have her claims for work injuries and/or occupational diseases determined by a member of the Judicial Branch of government and not the Executive Branch of government as enacted by the 2013 Workers' Compensation Reform Act.

FACTUAL ALLEGATIONS

47. The Plaintiff would show unto the Court that on May 13, 2023 while employed in the course and scope of her employment as a shift supervisor/trainee for the Defendant at its location at 9435 South Northshore Drive Knoxville, TN 37922, that she was sitting on a stool placing ad tags onto lower shelves of merchandise. She attempted to get up when the stool suddenly flipped causing the Plaintiff to sustain injuries to her right arm and hand for which she has developed emotional difficulties as well. The Plaintiff would show unto the Court that the stool on which the Plaintiff was injured had been furnished by a fellow worker which should have not been used, but was purchased by the Plaintiff's manager and fellow worker for the employees instead of a proper stool on which the Plaintiff should have been working. The Plaintiff would show unto the Court that the Defendant had a duty to provide the Plaintiff a safe workplace, but in the course and

scope of the Plaintiff's employment, the Defendant breached this duty such that the Plaintiff was injured as a result of the negligence of a fellow employee and the Defendant's failure to make safe the environment where the Plaintiff was working.

48. Following the Plaintiff's injury, the Plaintiff was given surgery and an open reduction was conducted with an Orif of the right distal radius with an insertion of a volar corrections plate and ten screws were utilized to stabilize the Plaintiff's right hand and arm. Following the Plaintiff's injury, she developed serious problems. She was no longer able to perform her job, suffered pain, emotional problems, and difficulty sleeping.
49. The Plaintiff would show unto the Court that the Plaintiff's employment activity more likely than not was primarily responsible for the Plaintiff's injury and her need for medical care of both her physical and emotional injuries.
50. The Plaintiff would show unto the Court that a concern has arisen in reference to the payment of temporary total disability benefits and medical care for which it appears that the Plaintiff has not reached maximum medical improvement in reference to her overall physical and emotional condition. The Plaintiff has not been placed at maximum medical improvement regarding her physical nor emotional injuries.
51. Following the Plaintiff's accident and as a result of his economic circumstances, the Plaintiff has developed a concern for her overall economic circumstances and has developed a concern that if the Defendant fails to pay the Plaintiff temporary total

disability benefits or once the Plaintiff has reached maximum medical improvement from her physical injuries and has not reached maximum medical improvement as a result of her emotional injuries, that the termination of her benefits would lead to economic consequences for the Plaintiff.

DENIAL OF EQUAL PROTECTION FOR THE PLAINTIFF'S EMOTIONAL INJURIES

52. The Plaintiff brings this cause of action as a Declaratory Judgment to challenge the constitutionality and legality of certain portions of the Tennessee Workers' Compensation Act, and more specifically T.C.A. §50-6-207(1)(D) and (E) which were in effect at the time of the Plaintiff's injuries.

53. Pursuant to T.C.A. §50-6-207(1)(D), an employee claiming a mental injury, as defined by T.C.A. §50-6-102 occurring on or after July 1, 2009, shall be conclusively presumed to be at maximum medical improvement upon the earliest occurrence of the following:

(i) at the time the treating psychiatrist concludes the employee has reached maximum medical improvement; or

(ii) 104 weeks after the date of injury in the case of mental injuries where there is no underlying physical injury;

(E) An employee claiming an injury as defined in T.C.A. §50-6-102, when the date of injury is on or after July 1, 2014, shall be conclusively presumed to be at maximum medical improvement

when the treating physician ends all active medical treatment and the only care provided is for the treatment of pain or for a mental injury that arose primarily out of a compensable physical injury. The employer shall be given credit against an award of permanent disability for any amount of temporary total disability benefits paid to the employee after the date that the employee attains maximum medical improvement as determined by a Workers' Compensation Judge.

54. The Plaintiff would show unto the Court that if an employee suffers a mental injury that arises primarily from a work-related injury and independent of any physical injury, T.C.A. §50-6-207(1)(D) governs when maximum medical improvement occurs as the earliest of two defined events. If, on the other hand, as in the instant case, the mental injury arose primarily from the effects of the physical injury, T.C.A. §50-6-207(1)(E) defines when maximum medical improvement occurs. Under T.C.A. §50-6-207(1)(E), a Claimant such as the Plaintiff in the instant case is deprived of temporary total disability benefits in any amount whatsoever when a treating physician ends all active medical treatment, and the only care provided is for the treatment of pain or for a mental injury that arose primarily out of a compensable physical injury. As applied to the Plaintiff, the Plaintiff would show unto the Court that under Tennessee's Open Court's Doctrine, the Plaintiff and all other injured workers similarly situated, are being deprived of temporary total disability benefits even though they have not reached maximum medical improvement in terms of medical care and treatment for an emotional injury. The Plaintiff requests that this Court declare that these portions of the Tennessee Workers' Compensation Act are unconstitutional under Article I, Section 17 of the Tennessee

Constitution as a denial of the right of access to Courts because these statutes deprive an injured worker such as the Plaintiff of disability benefits under these circumstances for an indefinite amount of time, thereby creating a system of redress that no longer functions as a reasonable alternative to tort litigation.

55. The Plaintiff would show unto the Court that despite the fact that the Plaintiff has not reached maximum medical improvement from a physical nor an emotional standpoint and that should Plaintiff's emotional conditions continue to keep her out of work, and despite the fact that the Plaintiff remains totally unable to return to her work as a result of her physical and emotional injuries that arose primarily out of a compensable physical injury, the Defendant has failed to agree and confirm that the Defendant will compensate the Plaintiff for temporary total disability benefits. Even if the Defendant does compensate the Plaintiff for temporary total disability benefits as a result of her physical injuries presumably under the guise of T.C.A. Section 50-6-207(1)(E) that even if the Plaintiff were to reach maximum medical improvement as a result of her physical injuries, the Plaintiff believes that the Defendant will cease payment of temporary total disability benefits despite that the fact that the Plaintiff has not reached maximum medical improvement as a result of her mental injuries.

56. The Plaintiff would show unto the Court that prior to the filing of this cause of action, the Plaintiff properly gave notice to her employer's through its agents, servants, and employees that she was in need of additional temporary total disability benefits and

medical care. The Defendant has failed to compensate the Plaintiff for temporary total disability benefits and/or medical care to which she is entitled.

57. The Plaintiff would show unto the Court that T.C.A. §50-6-207(1)(E) which places a limit on temporary total disability benefits for mental injuries, creates a statutory gap in benefits in violation of the Plaintiff's Constitutional right of access to Tennessee's Courts. This statute cuts off a severely injured worker from disability benefits at a critical time when the Plaintiff, as an injured worker, cannot return to work and is totally disabled for emotional injuries despite the fact that treatment for the physical injuries could have ceased and/or were held in abeyance. This termination and/or cut off of temporary total disability benefits deprives the Plaintiff and individuals similarly situated of their basic necessities of life even though a Plaintiff, as in the instant case, are in continuing need of medical care and treatment for their emotional injuries.

58. The Plaintiff would show unto the Court that when applied to the Plaintiff's circumstances, the Tennessee Workers' Compensation Law, more specifically T.C.A. §50-6-207(1)(E), fails to provide "full medical care and wage loss of payments for a total or for that matter a partially disabled individual suffering from a mental injury that arose primarily out of hers compensable physical injury. The Plaintiff would show unto the Court that for injured workers like the Plaintiff who are not yet legally entitled to assert a claim for permanent and total disability benefits, the Tennessee Workers' Compensation Reform Act lacks adequate and sufficient safeguards and cannot be said to continue functioning as a "system of compensation without fault" that stands as a reasonable

alternative to tort litigation. The Plaintiff would request that this Court hold that T.C.A. §50-6-207 as written by the Legislature is unconstitutional.

59. The Plaintiff would show unto the Court that as a result of the anticipated termination of temporary total disability benefits by the Defendant, the Plaintiff requests that T.C.A. §50-6-207(1)(D) and (E) be declared unconstitutional. The Plaintiff would show unto the Court that decreasing substantially the period of disability benefits from 450 weeks to 104 weeks alone for emotional care results in a dramatic reduction of disability benefits.
60. The Plaintiff would show unto the Court that the natural consequences of a denial of legal redress is the potential economic ruination of an injured worker that presents terrible consequences for the Plaintiff. The Plaintiff would show unto the Court that a system of redress for injury that requires the Plaintiff to forgo any and all Common Law rights for recovery for full damages for an injury and thereafter surrender herself to a system which denies compensation, is both fundamentally and manifestly unjust. The Plaintiff would show unto the Court that T.C.A. §50-6-207(1)(D) and T.C.A. §50-6-207(1)(E) should be held unconstitutional as applied to the Plaintiff and all others similarly situated as a denial of access to the Courts under Tennessee's Open Courts Doctrine and Tennessee's Constitution. The above-described statutes deprive a severely injured worker of disability benefits at a critical time when the worker cannot return to work and is totally disabled when the worker's doctor as chosen by the employer has determined that the Plaintiff has not reached maximum medical improvement. Such a significant diminution in the availability of benefits for severely injured workers, particularly when considered

in conjunction with the totality of the changes to the Tennessee Workers' Compensation Law in the last decade since 2013 should be declared unconstitutional. When totally disabled workers such as the Plaintiff can be routinely denied benefits for any definite period of time and have no alternative remedy to seek compensation for their injuries, something is dramatically, fundamentally, and unconstitutionally wrong with the statutory scheme.

61. The Plaintiff would show unto the Court that prior to the filing of this cause of action for a Declaratory Judgment, the Plaintiff complied with all reasonable requirements of the Tennessee Workers' Compensation Reform Act, but the Defendants have failed to compensate the Plaintiff with appropriate temporary total disability benefits and medical care.

ESCAPE CLAUSE-VIOLATION OF UNIFORM OPERATIONS OF LAW-DENIAL OF EQUAL PROTECTION AND DUE PROCESS

62. As a result of the Plaintiff's industrial accidents which occurred on May 13, 2023, the Plaintiff has suffered serious disabilities to work and earn wages. The Plaintiff would show unto the Court that as a result of her physical injuries should she sustain an impairment of less than 10% to the body as a whole despite the fact that she may not be able to return to her previous occupation, the Plaintiff would show unto the Court that pursuant to T.C.A. §50-6-242, for injuries occurring after July 1, 2014, in "extraordinary cases" as in the instant case, it is only if the Judge finds by clear and convincing evidence that an employee's injury that is governed by T.C.A. §50-6-207(3) would be "inequitable

in light of the totality of the circumstances,” that the Judge may award an amount up to a maximum of 275 weeks, but only if a Judge documents the three following facts:

- A. The authorized treating physician has assigned a medical impairment rating of 10% to the body as a whole or greater.
- B. The authorized treating physician has certified on a Tennessee Department of Labor form that the employee’s injury has resulted in permanent restrictions which would prevent the employee from returning to the “pre-injury occupation.”
- C. The employee is earning an average weekly wage less than 70% of the pre-injury “wage or salary.”

63. The Plaintiff would show unto the Court that it is inequitable and irrational for the Tennessee General Assembly to arbitrarily require that a Plaintiff sustain or exceed a 10% impairment to the body as a whole based upon the AMA Guidelines as applied to the Plaintiff which would require the Plaintiff to earn an average weekly wage of less than 70% of her pre-injury wage or salary such that the arbitrary selection of a 10% impairment rating and the selection of earning less than 70% of the pre-injury wage or salary is not reasonably related to any legitimate state interest and disqualifies the Plaintiff from receiving additional Workers’ Compensation disability benefits because the Plaintiff has not reached an arbitrary threshold of physical impairment of at least 10% to the body as a whole nor has he obtained an average weekly wage of less than 70% of the pre-injury “wage or salary.” The arbitrary selection of 10% as applied to the Plaintiff and

the arbitrary selection of earning less than 70% of the pre-injury “wage or salary” is unreasonable in as much as the Plaintiff could sustain less than 10% impairment and obtain a job making much less than she was making at the time of his injury, but would still be disqualified from receiving enhanced benefits. The Plaintiff would request that this Court revisit the case of Brown v. Campbell County Board of Education, 915 S.W.2d 407 (Tenn.1995) and hold that the classification for injured individuals having to reach a threshold of 10% impairment or greater and earning an average weekly wage of less than 70% of his pre-injury wage or salary is not rationally and reasonably related to the purposes for which the classification seeks to accomplish.

64. The Plaintiff would show unto the Court that there must be reasonable and substantial differences in the situations and circumstances of persons placed in different classes which would enlist or disclose the propriety and necessity of the classification. If legislation arbitrarily confers upon one class benefits, from which others in like situations are excluded, it is a grant of a special right, privilege, or immunity prohibited by the Constitution, and a denial of equal protection of the laws to those not included. “The fundamental rule is that all classifications must be based upon substantial distinctions which make one class really different from another, and the characteristics which form the basis of the classifications must be germane to the purpose of the law.” The Plaintiff would request that this Court find that there is a discriminatory classification based on injured workers whose medical impairments equal or exceed 10% under the AMA Guides and those who do not. The Plaintiff would request this Court to hold that there is a discriminatory classification based on an employee earning an average weekly wage of

less than 70% of his pre-injury “wage or salary.” The Plaintiff would show unto the Court that the arbitrary selection of a 10% impairment rating or a threshold of 10% the selection of an employee earning average weekly wages of less than 70% of her pre-injury wage or salary in this statute discriminates between workers who are totally unable to return to their pre-injury occupation and/or who have impairments under the AMA Guidelines of less than 10% are precluding from obtaining enhanced benefits. The Plaintiff would show unto the Court that the arbitrary selection of a 10% impairment rating or threshold of 10% is not rationally based, nor does the Trial Court have the discretion to apply the “extraordinary case” multipliers as the result of an arbitrary selection of a 10% medical impairment as specifically set out in T.C.A. §50-6-242. The Plaintiff would show unto the Court that requiring an employee to earn an average weekly wage of less than 70% of his pre-injury “wage or salary” is also arbitrary and irrational.

65. As previously noted in the case of Brown v. Campbell County Board of Education Id., the AMA Guidelines do not provide percentage ratings for some mental and physical impairments. The Guides caution against their exclusive use in determining vocational disability. In the instant case, the Plaintiff contends that it is arbitrary, capricious, and irrational with no state legitimate interest that an impairment rating of 10% to the body as a whole or a qualification that an employee make less than 70% of his pre-injury wage or salary should be used to make a direct financial award or direct estimate of a vocational disability. There is no uniformity or fairness requiring an injured party to obtain a threshold rating of 10% impairment to the body as a whole based upon the use of the AMA Guides. It is not rational to fail to pay an employee enhanced benefits because the

employee was making an average weekly wage of less than 70% of her pre-injury wage or salary. The Legislature has not provided a reasonable rating alternative for assessing vocational disability or making an assessment of a financial award to those individuals who have less than a 10% impairment rating, but who have been precluded from returning to their pre-occupation prior to their injury. The Plaintiff would request that this Court hold that T.C.A. §50-6-242 which requires a threshold impairment rating of 10%, but have been precluded from returning to their pre-occupation prior to the injury be declared unconstitutional as applied to the to the Plaintiff.

66. The Legislature has not provided a reasonable rating alternative for assessing vocational disability based upon the fact that an employee should be required to earn an average weekly wage of less than 70% of his pre-injury wage or salary. The Plaintiff would request that this Court hold that T.C.A. §50-6-242 which requires a threshold impairment rating of 10% to the body as a whole based upon the AMA Guides and the requirement that the Plaintiff sustain an average weekly wage making less than 70% of her pre-injury wage or salary should be held to be in violation of the public policy of the state of Tennessee as well as in violation of the following state statutes which are incorporated fully herein by reference and will be read in their entirety at the trial of this cause to wit:

T.C.A. §50-6-114(a)-No contract or agreement, written or implied, or rule, regulation, or other device shall in any manner operate to relieve any employer, in whole or in part, of any obligation created by this Chapter except as herein provided.

T.C.A. §8-50-103-Employment of the handicapped-discrimination prohibited

As a result of the violation of established public policy, the Plaintiff contends that she has been or will be denied the opportunity to receive additional disability benefits.

ILLEGALITY OF OFFSET OF SOCIAL SECURITY RETIREMENT AND OLD AGE BENEFITS

67. Social Security pension benefits lift more people above the poverty line than any other program. To the extent that the Tennessee Workers' Compensation Reform Act precludes the Plaintiff from Social Security pension benefits as hereinafter discussed, this Court should declare those statutes as unconstitutional as a denial of remedy and a denial of due process and in violation of Tennessee's Constitution and the United States Constitution. Social Security pension benefits play a vital role in producing poverty in the State of Tennessee as well as other states, and they lift more people above the poverty line than any other program in the United States. Without Social Security according to the Center on Budget and Policy Priorities, 22.0 million more adults and children would be below the poverty line using the March 2024 population survey. Although most of those whom Social Security keeps out of poverty are aged 65 or older, 5.7 million are under age 65, including 959,000 children. Social Security is particularly important for older women and people of color, who have fewer retirement resources outside of Social Security pension benefits. Depending on their design, reductions in Social Security pension benefits could significantly increase poverty, particularly among older adults as will be discussed hereinafter.

68. On May 13, 2023 at the time of her injury, the Plaintiff was sixty-three years of age and nearly ready to qualify to receive Social Security old age insurance benefits when she turned sixty-four on August 28, 2023. The Plaintiff believes that the employer will argue that the Plaintiff's benefits should be paid pursuant to T.C.A. Section 50-6-207(4). The Plaintiff believes that the Defendant will seek to penalize the Plaintiff by claiming an offset of benefits to the extent of Social Security old age benefits by which the Plaintiff would be penalized as a result of her age and will be denied equal protection of benefits that are afforded to workers who are much younger than the Plaintiff. The Plaintiff would request that this Court hold that T.C.A. Section 50-6-207(4) violates both the Tennessee and the United States Constitution, by discriminating against the Plaintiff on the basis of age. This Court should revisit T.C.A. Section 50-6-207(4) as previously interpreted by the cases of McCoy v. TC Illinois, Inc., 14 S.W.3d 734 (Tenn. 2000), and Correll v. El Dupont de Nemours Co., 207 S.W.3d 751 (Tenn. 2006) which provided an offset reducing the amount of benefits for individuals receiving both Workers' Compensation benefits and Social Security retirement benefits. Specifically, when an individual qualifies for both Social Security retirement benefits and Workers' Compensation benefits, Workers' Compensation benefits are reduced by the amount of retirement benefits attributable to employer contributions that the employee may receive under Title 42, Chapter 7, Title II of the Social Security Act (42 USC Sections 401 et seq). The Plaintiff requests that this Court hold that this offset violates Tennessee's Constitution and more specifically Article I, Section 21 of the Tennessee Constitution and the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. The Plaintiff would show unto the Court that this offset treats the Plaintiff differently from

others similarly situated without a rational basis. More recently in the case of Merrill v. Utah Labor Commission, 163 P.3d 741 (Utah April 24, 2009), the Supreme Court of the State of Utah held that reducing an employer's liability for Workers' Compensation benefits is not a legitimate objective and is irrational because the Workers' Compensation Act has already limited the liability of employers for injuries employees receive while on the job to statutorily define recoveries. It is not a legitimate objective of the Legislature to further reduce employer liability based upon payment of funds an employee would be entitled to receive regardless of eligibility for Workers' Compensation; nor is it legitimate to take into account the money the employee has contributed to Social Security retirement which is a vested benefit, not an entitlement, regardless of whether an employee has sustained an on-the-job injury. The Plaintiff would show unto the Court that the purpose of Social Security retirement benefits is entirely different from the Workers' Compensation scheme. Social Security retirement benefits are vested benefits provided to persons over age 65 regardless of injury. These benefits are not disability benefits, but are old age benefits serving the same function as pension payments. Social Security retirement benefits and Workers' Compensation disability payments are not duplicative and are not wage-loss replacements. As the Utah Supreme Court held in the case of Merrill v. Utah Labor Commission, Social Security retirement benefits are not paid in connection with an injury or disability, but are paid after an individual has contributed to the Social Security fund. While Workers' Compensation Social Security retirement may be similar in that both are social programs, Social Security retirement benefits unlike Workers' Compensation benefits provide the recipient with supplemental income after he or she contributes to the program throughout his or her working life.

While old age Social Security may well provide some level of income while one has been injured at work, it is not to be considered a replacement for not working. It is paid as a result of work history and the attainment of the age or required age, not by reason of any injury. Thus, the “triggering event” of reaching the retirement age specified by the Federal statute after one has worked the requisite number of years is in direct contrast to Workers’ Compensation benefits which are available only if a worker is injured while in the course and scope of his or her employment and experience wage loss as a result of such injury. Because a worker aged sixty-five or older can supplement his or her Social Security retirement benefits by income from gainful employment, Social Security benefits have evolved into a benefit more associated with advanced years than a replacement for wage loss. More importantly, the public policy and the Age Discrimination in Employment Act (ADEA) 29 USC Section 623(a)(1) further supports the proposition that Social Security retirement benefits are not wage loss benefits and are not duplicative of Workers’ Compensation benefits. Among ADEA’s substantive provisions is one that prohibits an employer from discriminating against an employee with respect to his or her compensation under terms, conditions, or privileges of employment because of such individual’s age. See 29 USC Section 623(a)(1). This provision makes it improper for a private employer or the state itself with respect to its employees to compel its older employees to substitute retirement benefits for disability benefits. The public policy established by 29 USC Section 623(a)(1) makes it clear that T.C.A. Section 50-6-207(4) is in violation of public policy and is Constitutionally arbitrary and irrational.

69. The Plaintiff would show unto the Court that it is not reasonable for the Tennessee General Assembly to classify individuals based upon receipt of Federal Social Security retirement benefits because this classification singles out certain people without a rational basis. The Plaintiff would show unto the Court that reducing an employer's liability for Workers' Compensation payments is not a legitimate objective because the Tennessee Workers' Compensation Act has already limited the liability of employers for injuries that employees receive while on the job to statutorily define recoveries. The Plaintiff would further show unto the Court that it is not a legitimate objective of the Legislature to further reduce employer liability based on payment of funds that an employee would be entitled to receive regardless of eligibility for Workers' Compensation; nor is it legitimate to take into account the money the employee has contributed to Social Security retirement or what their spouse would have contributed for purposes of spousal benefits.
70. The Plaintiff would show unto the Court that the Tennessee Workers' Compensation Act was enacted to assure that an injured employee and his or her family were provided an income during the period of total disability as well as compensation for any resulting permanent disability to eliminate the expense, delay, and uncertainty of the employee having to prove the employer's negligence and to place the burden of industrial injuries on the industry in which the Plaintiff is working. The Plaintiff would show unto the Court that payments to the Plaintiff and others similarly situated, and Workers' Compensation benefits are in lieu of such elements of damages in the Common Law tort system as lost wages, lost earning capacity, reimbursement of past and future medical expenses, past and present pain and suffering, emotional distress, and other factors. In

exchange for their right to sue at Common Law, injured workers receive compensation for damages incurred by an on-the-job injury, including compensation for the injury itself, medical, nurse, hospital services, and medicine. The Workers' Compensation system in the State of Tennessee does not provide a measure to opt out. Social Security retirement benefits are based on age vested benefits serving the same function as pension payments and should not be considered disability benefits. The Plaintiff would show unto the Court that Social Security retirement benefits and Workers' Compensation disability benefits are not duplicative and should not be held to be wage-loss replacements. Social Security Retirement and Workers' Compensation disability benefits are two distinct programs and should not offset one another due to the fact that both programs are based on completely different concepts. The Plaintiff would show unto the Court that there is no legitimate reason why a thirty-nine-year-old injured worker should receive full permanent partial disability benefits and a sixty-six-year-old worker with an identical injury should only receive an impairment award due to the fact that he or she has reached Social Security retirement age. The Plaintiff would show unto the Court that there is no rational basis to deny a class of injured workers a category of benefits based upon their age. More importantly, the Plaintiff's Social Security retirement benefits in this case are not being paid and have not been paid in connection with any injury or disability. Because the Plaintiff can supplement her Social Security benefits from gainful employment, her Social Security retirement benefits should be held by this Court to have evolved into a benefit more associated with her advanced years than a replacement for wage loss.

71. The Plaintiff would show unto the Court that the denial of Workers' Compensation disability benefits based upon the assumption that one eligible to receive old age Social Security benefits is fully compensated for his or her injury by some level of Workers' Compensation benefits reduced by a portion of Social Security benefits raises an issue as to whether the Workers' Compensation system that is now being administered in the State of Tennessee is an adequate substitute remedy for that which might not be available in the Common Law tort system for such an injury, thus implicating the validity of the system as a substitute for access to the courts. The Plaintiff would request that this Court revisit the case of Vogel v. Wells Fargo Guard Services, 937 S.W.2d 856 (Tenn. 1996) and to hold that Workers' Compensation benefits are wage loss replacement income, while Social Security retirement benefits are not duplicative of workers' compensation benefits but serve other important purposes. Social Security retirement benefits provide the recipient with supplemental income after he or she contributes to the program throughout his or her working life. Therefore, it is not rational to offset Social Security benefits against Workers' Compensation disability benefits.

72. The Plaintiff would request that this Court hold that T.C.A. Section 50-6-207(4) is unconstitutional and that this statute is defective in creating the classifications of "old age Social Security recipient" and reducing benefits for those persons that such classification as applied to the Plaintiff bears no reasonable or rational relationship to a proper governmental purpose of avoiding duplication of benefits, and that it results in all persons within the class of "old age Social Security recipients" not being treated equally as someone under retirement age. Thus, withholding Workers' Compensation benefits from

persons such as the Plaintiff who is sixty-four years of age because she presumably receives retirement benefits is not rationally related to the goal of preventing duplicative benefits because Workers' Compensation benefits do not serve the same purpose as retirement benefits. More specifically, as a matter of public policy, T.C.A. Section 50-6-207(4) also violates the public policy of the State of Tennessee as enumerated in the Tennessee Human Rights Act, more specifically T.C.A. Section 4-21-407 and T.C.A. Section 8-50-103 which prohibit discrimination based upon age and discrimination based upon disability.

73. The Plaintiff would show unto the Court that the natural consequences of a denial of legal redress is the potential economic ruination of an injured worker that presents terrible consequences for an injured Plaintiff and his or her family. The Plaintiff would show unto the Court that a system of redress for injury that requires the Plaintiff to forgo any and all Common Law rights for recovery for full damages for an injury and thereafter surrender herself to a system which denies compensation is both fundamentally and manifestly unjust.

CONTROL OF MEDICAL CARE AND MANDATORY TREATMENT BY THE STATE OF TENNESSEE, AN EMPLOYER OR ITS CARRIER, VIOLATES TENNESSEE'S COMMON LAW PROHIBITION AGAINST UNREASONABLE RESTRAINT OF TRADE AND CONSTITUTES COMMON LAW MONOPOLIZATION OF TRADE FOR MEDICAL SERVICES AND VIOLATES ARTICLE I, SECTION 22 OF THE TENNESSEE CONSTITUTION

74. Following the Plaintiff's injuries, the Plaintiff gave timely notice to her employer of her injuries, but she was not provided with a panel from which she could choose for

continuing care and treatment. The Plaintiff was sent to a physician who ordered an MRI and diagnosed the Plaintiff with debilitating orthopedic injuries. While it has long been established that the employer has the right in the first instance to select a physician for medical care, as a matter of first impression and given the multitude of medical providers that should be available to an injured worker, the Plaintiff contends that as a matter of first impression that requiring an injured worker to accept medical care by a select or limited group of medical providers in an arrangement, accommodation, or an attempt to injuriously affect free trade and commerce in the State of Tennessee such that as a part of the scheme and action taken by the Defendant in this case is that the natural intended result of the Defendant's actions is an illegal restraint of trade and accommodation in trust in limited form, intending to stifle competition and to create a monopoly for the rendering of medical care for work-related injuries and/or occupational diseases.

75. The Plaintiff contends that the actions of the Defendant and T.C.A. Section 50-6-204 violate Tennessee's Common Law prohibition against unreasonable restraint of trade and constitute Common Law monopolization of trade for medical services. As a direct and proximate result of this policy, injured workers are deprived of the best quality of medical services that could be provided, and competition for those medical services is stifled. The Plaintiff contends that such action is irrational, arbitrary, unreasonable, and constitutes a monopolization of medical care that when taken to its extreme, results in socialized medicine and/or employer and insurance carrier-controlled medicine and/or monopolized medicine and an unlawful restraint of trade. The Plaintiff would show unto the Court that it has long been established that contracts, agreements, arrangements, or

accommodations in whatever form or name are contrary to public policy and should be held void when they tend to impair free competition and fair trade to enhance or control price to the injury of the public.

76. The Plaintiff would show unto the Court that Article I, Section 22 of the Tennessee Constitution establishes that as a matter of public policy in the State of Tennessee that perpetuities and monopolies are contrary to the genius of a free state and should not be allowed. The Plaintiff would show unto the Court that in accordance with the above-described statute, T.C.A. Section 50-6-204, the Defendants' actions constitute a deprivation of property without due process in violation of Article I, Section 8 of the Tennessee Constitution as well as the taking away of the Plaintiff's choice of health care for which the Plaintiff should have a property right in violation of Article I, Section 21 of the Tennessee Constitution.

77. The Plaintiff would show unto the Court that the Defendants' attempts to control medical services for injured workers and to monopolize those medical services no longer serve a legitimate purpose, but pose a risk of self-dealing; and the pre-engineering of medical care. The Plaintiff would show unto the Court that when a state empowers a group of active market participants whether through employers and/or their insurance carriers to decide who can or cannot provide medical services in the marketplace and on what terms, that the need for supervision is manifest. The Defendants' attempts to control and/or monopolize medical services as enabled by T.C.A. Section 50-6-204, in the modern age serves no legitimate purpose, but is an unreasonable restraint of trade. The Plaintiff

would further show unto the Court in the instant case that the Defendants' reliance upon the statutory authority of T.C.A. Section 50-6-204 to control and monopolize medical services constitutes an abuse and violation of public policy and more specifically, Article I, Section 22 of the Tennessee Constitution.

78. The Plaintiff would show unto the Court that the purpose of the enactment of Article I, Section 22 of Tennessee's Declaration of Rights is much like the Federal Anti-Trust Act such that in the exercise of governmental powers, there may not be unconstitutional created monopolies that have no legitimate relationship to the public purpose sought to be accomplished and in the absence of such legitimate relationship, the monopoly sought to be created should be held void, unreasonable, and oppressive. The Plaintiff would request this Court to hold that as a matter of first impression, that the power of an employer and/or its Workers' Compensation insurance carrier to control medical providers should not carry the implied authority to create monopolies. The Plaintiff would further show unto the Court that by allowing the Defendant Employer and its Workers' Compensation Insurance carrier to control medical care by providing physicians pre-chosen or manipulated to such an extent as to allocate medical services through the insurance carrier's own network should be held unconscionable and a monopolization of health medical services in the State of Tennessee. The Plaintiff would show unto the Court that the monopolization of medical care through T.C.A. Section 50-6-204 coupled with the presumption that the employer's insurance carrier's physicians' opinions shall be presumed to be correct on the issue of causation pursuant to T.C.A. Section 50-6-102(14)(E) and T.C.A. Section 50-6-204(k)(7) in essence allows the employer and its

insurance carrier to provide “three blind mice” with a presumption of correctness on the issue of causation with a list or network of pre-determined physicians, all of which is in violation of T.C.A. Section 50-6-116 which provides... “For any claim for Workers’ Compensation benefits for an injury, as defined in this chapter, when the date of injury is on or after July 1, 2014, this chapter shall not be remedially or liberally construed, but shall be construed fairly, impartially, and in accordance with basic principles of statutory construction, and this chapter shall not be construed in a manner favoring the employee or the employer.” Because of the monopolization of medical services and the inherent abuse that can be created engineering and/or manipulating the control of medical care, the Plaintiff would request that this Court revisit the case of Jumper v. Kellogg Co., W2020-01274-SC-R3-WC (Tenn. Lexis 175) Tenn. June 23, 2021. Because of the monopolization of medical services and the inherent abuse that can be created by engineering and/or manipulating the control of medical care, in light of the most recent U.S. Supreme Court case of Securities and Exchange Commission v. Jarkesy et al, __U.S.__, No. 22-859, 2024 U.S. Lexis 2847(decided June 27, 2024), the Plaintiff would request that this Court revisit the case of Jumper v. Kellogg Co., W2020-01274-SC-R3-WC (Tenn. Lexis 175) Tenn. June 23, 2021 and hold that the statutory presumption set forth in T.C.A. Sections 50-6-102(14)(E) and T.C.A. Section 50-6-204(k)(7) in favor of the authorized treating physician are constitutionally invalid as fruit from the monopolization of medical services engineered on behalf of the employer by its insurance carriers as well as in violation of public policy as set forth in T.C.A. Section 4-5-326 and the United States Supreme Court case of Loper Bright Enterprises et al v. Raimondo, __U.S.__ 2024 U.S. Lexis 2882, (decided June 28, 2024).

79. Pursuant to T.C.A. Section 50-6-204(i)(1), the “Administrator,” the Chief Administrative Officer of the Bureau of Workers’ Compensation of the Tennessee Department of Labor and Workforce Development in consultation with the Medical Care and Cost Containment Committee and the Advisory Council on Workers’ Compensation as authorized to establish by rule, in accordance with the Uniform Administrative Procedures Act, a comprehensive medical fee schedule and a related system that includes, but is not limited to procedures for review of charges, enforcement procedures, and appeal hearings to implement the fee schedule. In developing these rules, the Administrator shall strive to ensure the delivery of quality medical care in Workers’ Compensation cases and access by injured workers to primary and specialty care while controlling prices and system cost within the State of Tennessee.

80. The Plaintiff contends that T.C.A. Section 50-6-204(i) as well as T.C.A. Section 50-6-204(j) has made it increasingly difficult for injured workers to receive the benefits to which they are entitled. T.C.A. Section 50-6-204 has taken away a worker’s right to use a health care practitioner of his or her choosing, and pursuant to T.C.A. Section 50-6-122 and T.C.A. Section 50-6-123 has added utilization review and case management system services which has served only to create additional bureaucracies that are meant to either delay and/or deny medical benefits to injured workers.

81. While it has long been established that the employer has the right in the first instance to select the physician for medical care and treatment, as a matter of first impression and given the multitude of medical providers that should be available to an injured worker, the Plaintiff contends as a matter of first impression that requiring an injured or worker to

accept medical care and treatment by a select group of medical providers furnished by the employer and/or its carrier is in essence an arrangement, accommodation, or an attempt to injuriously affect free trade and commerce in the State of Tennessee, such that a part of the scheme and the action taken by the Defendants in this case and permitted by the Tennessee Workers' Compensation Reform Act of 2013 is such that the natural intended result of these statutes and the Defendants' actions is an illegal restraint on trade, a combination in trust in limited form, intending to stifle competition, and to create a monopoly for the rendering of medical services for work-related injuries and to control the outcome of an injured worker's claim for on-the-job injuries. The Plaintiffs contend that the actions of the Defendants and or the application of T.C.A. Section 50-6-204 as will be discussed herein, violate Tennessee's Common Law prohibition against unreasonable restraint of trade and constitute Common Law monopolization of trade for medical services. As a direct and proximate result of the enactment of T.C.A. Section 50-6-204 and as a result of the actions of the Defendants in this cause, injured workers are deprived of the best quality of medical services that could be provided, and competition for those medical services is stifled. The Plaintiffs contend that such action is irrational, arbitrary, and unreasonable and constitutes a monopolization of medical care when taken to its extreme, results in socialized medicine and/or employer and insurance carrier-controlled medicine and/or monopolized medicine and an unlawful restraint of trade. The Plaintiff will show unto the Court that it has long been established that contracts, agreements, arrangements, or accommodations, in whatever form or name, are contrary to public policy and should be held void when they tend to impair free competition and

fair trade and to enhance or control price to the injury of the public and/or manipulate the determination as to whether or not an injury was caused by an on-the-job accident.

82. The Plaintiff would show unto the Court that Article I, Section 22 of the Tennessee Constitution establishes that as a matter of public policy in the State of Tennessee that perpetuities and monopolies are contrary to the genius of a free state and should not be allowed. The Plaintiff would show unto the Court that in accordance with the above-described statute, T.C.A. Section 50-6-204, the Defendants' actions constitute a deprivation of property without due process in violation of Article I, Section 8 of the Tennessee Constitution as well as the taking away of the Plaintiff's choice of health care for which the Plaintiff should have a property right in violation of Article I, Section 21 of the Tennessee Constitution.

83. The Plaintiff would show unto the Court that the Defendants' attempts to control medical services for injured workers and to monopolize those medical services no longer serve a legitimate purpose, but pose a risk of self-dealing; and the pre-engineering of medical care. The Plaintiff would show unto the Court that when a state empowers a group of active market participants whether through employers and/or their insurance carriers to decide who can or cannot provide medical services in the marketplace and on what terms, that the need for supervision is manifest. The Defendants' attempts to control and/or monopolize medical services as enabled by T.C.A. Section 50-6-204, in the modern age serves no legitimate purpose, but is an unreasonable restraint of trade. The Plaintiff would further show unto the Court in the instant case that the Defendants' reliance upon

the statutory authority of T.C.A. Section 50-6-204 to control and monopolize medical services constitutes an abuse and violation of public policy and more specifically, Article I, Section 22 of the Tennessee Constitution.

84. The Plaintiff would show unto the Court that the purpose of the enactment of Article I, Section 22 of Tennessee's Declaration of Rights is much like the Federal Anti-Trust Act such that in the exercise of governmental powers, there may not be constitutionally created monopolies that have no legitimate relationship to the public purpose sought to be accomplished and in the absence of such legitimate relationship, the monopoly sought to be created should be held void, unreasonable, and oppressive. The Plaintiff would request this Court to hold that as a matter of first impression, that the power of an employer and/or its Workers' Compensation insurance carrier to control medical providers should not carry the implied authority to create monopolies. The Plaintiff would further show unto the Court that by allowing the Defendant Employer and its Workers' Compensation Insurance carrier to control medical care by providing physicians pre-chosen or manipulated to such an extent as to allocate medical services through the insurance carrier's own network should be held unconscionable and a monopolization of health medical services in the State of Tennessee. The Plaintiff would show unto the Court that the monopolization of medical care through T.C.A. Section 50-6-204 coupled with the presumption that the employer's insurance carrier's physicians' opinions shall be presumed to be correct on the issue of causation pursuant to T.C.A. Section 50-6-102(14)(E) and T.C.A. Section 50-6-204(k)(7) in essence allows the employer and its insurance carrier to provide "three blind mice" with a presumption of correctness on the

issue of causation with a list or network of pre-determined physicians, all of which is in violation of T.C.A. Section 50-6-116 which provides... “For any claim for Workers’ Compensation benefits for an injury, as defined in this chapter, when the date of injury is on or after July 1, 2014, this chapter shall not be remedially or liberally construed, but shall be construed fairly, impartially, and in accordance with basic principles of statutory construction, and this chapter shall not be construed in a manner favoring the employee or the employer.” Because of the monopolization of medical services and the inherent abuse that can be created engineering and/or manipulating the control of medical care, the Plaintiff would request that this Court revisit the case of Jumper v. Kellogg Co., W2020-01274-SC-R3-WC (Tenn. Lexis 175) Tenn. June 23, 2021. Because of the monopolization of medical services and the inherent abuse that can be created by engineering and/or manipulating the control of medical care, in light of the most recent U.S. Supreme Court case of Securities and Exchange Commission v. Jarkesy et al, __U.S.__, No. 22-859, 2024 U.S. Lexis 2847(decided June 27, 2024), the Plaintiffs would request that this Court revisit the case of Jumper v. Kellogg Co., W2020-01274-SC-R3-WC (Tenn. Lexis 175) Tenn. June 23, 2021 and hold that the statutory presumption set forth in T.C.A. Sections 50-6-102(14)(E) and T.C.A. Section 50-6-204(k)(7) in favor of the authorized treating physician are constitutionally invalid as fruit from the monopolization of medical services engineered on behalf of the employer by its insurance carriers as well as in violation of public policy as set forth in T.C.A. Section 4-5-326 and the United States Supreme Court case of Loper Bright Enterprises et al v. Raimondo, __U.S.__ 2024 U.S, Lexis 2882, (decided June 28, 2024).

**VIOLATION OF IMPLIED COVENANT OF CONFIDENTIALITY,
PLAINTIFF'S LIBERTIES AND PRIVILEGES, AND VIOLATION OF
PLAINTIFF'S RIGHT TO CONTRACT**

85. In 2002, the Tennessee Supreme Court held that there is an implied covenant of confidentiality between a physician and his patient which prohibits informal discussions between a defense attorney and a Plaintiff's non-party physician. See Givens v. Mullikin ex rel. McElwaney, 75 S.W.3d 383 (Tenn. 2002). Four years later, the Tennessee Supreme Court held that ex parte communications between the Plaintiff's non-party physicians and a defense attorney is not permissible in Tennessee. See Alsip v. Johnson City Medical Center, 197 S.W.3d 722 (Tenn. 2006).
86. In 2008, the Tennessee Supreme Court in the case of Overstreet v. TRW Commercial Steering Div., 256 S.W.3d 626 (Tenn. 2008) held that an employer may not communicate ex parte with an employee's treating physician without first obtaining a waiver of the implied covenant of confidentiality from the employee. The Tennessee Supreme Court performed a contract/public policy analysis to determine if there was a covenant of confidentiality between an injured worker and his physician. The Supreme Court noted that although Givens had held that there is a covenant of confidentiality *in fact* which did not exist in the Workers' Compensation context, the same covenant nevertheless existed by a legal implication.
87. In 2008, the Court properly noted that nothing in T.C.A. Section 50-6-204 permitted ex parte communications and "from this conspicuous absence, we must infer that the General Assembly did not intend such communications." Id. at page 14. According to the

Tennessee Supreme Court because the General Assembly had enacted a right to privacy and health care and had provided a comprehensive statutory scheme for the disclosure of information and of the Workers’

Compensation Act, the Court held that an implied covenant of confidentiality in law existed under the circumstances. *Id.* at page 15. Ultimately in Overstreet, the Tennessee Supreme Court held that while an employer may obtain medical reports, records, and as expressly provided in T.C.A. Section 50-6-204, the employer could not engage in ex parte communications with the injured worker’s physician.

88. More recently, however, the Tennessee General Assembly amended T.C.A. Section 50-6-204 and with the enactment of T.C.A. Section 50-6-204(a)(2)(A) established the following: “It is the intent of the General Assembly that the administration of the Workers’ Compensation system proceed in a timely manner and that the parties and the Bureau have reasonable access to the employee’s medical records and medical providers that are pertinent to and necessary for the efficient resolution of the employee’s Workers’ Compensation claims in a timely manner. To that end, employers or case managers may communicate with the employee’s authorized treating physician orally or in writing, and each medical provider shall be required to release the records of any employee treated for work-related injury to both the employer and the employee within thirty (30) days after admission or treatment. There shall be no implied covenant of confidentiality with respect to those records which will include all written memoranda, visual, or recorded materials, emails, and any written materials provided to the employee’s authorized treating physician

by case managers, employers, insurance companies, or their attorneys, or received from the employee's authorized treating physician.

89. Pursuant to T.C.A. Section 50-6-204(a)(2)(c), if the Bureau becomes involved in the appeal of a utilization review issue, then the Bureau is authorized to communicate with the provider involved in the dispute, either orally or in writing, to permit the timely resolution of the issue and should notify employee, employer, and any attorney representing the employee or employer that they may review or copy the documents and responses. Each party requesting copies of records shall pay a fee authorized by the subdivision (a)(1)(b) prior to the Bureau providing the requested copies.

90. T.C.A. Section 50-6-204(2)(D) provides that no relevant information developed in connection with authorized medical treatment of an examination provided pursuant to this section for which compensation is sought by the employee shall be considered a privileged communication and no medical providers shall incur any liability as a result of providing medical information, records, opinions, or reports as described in subdivision (a)(2)(C) provided that the medical provider complies with subsection (a)(2)(C). T.C.A. Section 50-6-204(a)(3)(A)(i) provides that the employee shall accept the medical benefits afforded under this section provided that in any case when the employee has suffered an injury and expressed a need for medical care, the employer shall designate a group of three (3) or more independent, reputable physicians, surgeons, chiropractors, or specialty practice group if available in the injured employee's community, or if not so available, in

accordance with subdivision (a)(3)(b) from which the injured employee shall select one (1) to be the treating physician.

91. While the Tennessee Supreme Court in the case of Overstreet v. TRW Commercial Steering Div., 256 S.W.3d 626 (Tenn. 2008) previously held that ex parte communications between an employer and the employee's physician were not permissible, the Tennessee General Assembly abolished the confidentiality between an injured worker and his physician, and in doing so, the Plaintiff contend that by the enactment of T.C.A. Section 50-6-204 as above-described, the Tennessee General Assembly in essence legislated away the Plaintiff's constitutional right of privacy, the Plaintiff's right to contract for his medical care and services, and violated the Plaintiff's liberties and privileges of confidentiality in contravention of Article I, Section 8 of the Tennessee Constitution which provides as follows: "That no man shall be taken or imprisoned, diseased of his free hold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty, or property, but by judgment of the law of the land."

92. Following the Plaintiff's injury on May 13, 2023 while employed in the course and scope of her employment as a shift supervisor for Tennessee CVS Pharmacy LLC in its location at 9435 South Northshore Drive Knoxville, Tennessee, when the Plaintiff was sitting on a stool placing ad tags onto lower shelves of merchandise when she attempted to get up and the stool suddenly flipped, causing the Plaintiff to sustain an injury to her right hand and arm for which she developed emotional difficulties as well. The stool was a mechanic's stool which should not have been used, but was purchased by the manager for employees

instead of an OSHA approved stool which should have been used for this purpose.

Following her injury, the Plaintiff was sent to the Parkwest Hospital emergency room and was then referred to Dr. Daniel Branham, an orthopedic surgeon with Tennessee Orthopedic Clinic. An MRI was conducted. Thereafter, the Plaintiff was taken to surgery and an open reduction was conducted with an Orif of the right distal radius with an insertion of a volar corrections plate and ten screws were utilized to stabilize the Plaintiff's right hand and arm. She was never provided with a panel of physicians from which she could choose for continuing treatment. Following the Plaintiff's initial surgery, the Plaintiff developed serious problems. She was no longer able to perform her job. She was initially released prematurely on September 14, 2023 with numbness and pain persisting in her right arm and hand. On February 12, 2025, Dr. Branham scheduled a nerve conduction study which revealed a severe right carpal tunnel syndrome (median nerve entrapment at the wrist) affecting sensory and motor components. As a result of the nerve conduction study, Dr. Branham performed a second surgery on the Plaintiff on February 25, 2025 which included a right carpal tunnel release, a right cubital tunnel release, and an anterior ulnar nerve subcutaneous transposition along with a right Guion's release. As a result of the emotional problems which she developed, Dr. Branham referred the Plaintiff to Dr. Audrea Merchant for psychiatric care. The Plaintiff is suffering from depression and a post traumatic stress disorder. The Plaintiff fears that the Defendant employer through its agents, servants, and employees will attempt to engage in ex parte communications with her physicians under the guise of T.C.A. Section 50-6-204 to the extent that the Plaintiff's constitutional rights to privacy will be violated, her right to contract for medical care and services will be taken, and the Plaintiff's liberties and

privileges of confidentiality will be destroyed in violation of Article I, Section 8 of the Tennessee Constitution which holds: “That no man shall be taken or imprisoned, or disseized of his freehold, liberties, and privileges, or outlawed or exiled, or in any manner destroyed or deprived of his life, liberty, or property, but by the judgment of his peers or the law of the land.”

93. The Plaintiff requests that this Court hold that T.C.A. Section 50-6-204(a)(1)(D) to the extent that it allows ex parte communications with the Plaintiff’s physicians should be struck down as arbitrary, capricious, and a denial of due process.

THE TENNESSEE WORKERS’ COMPENSATION REFORM ACT OF 2013 FAILS ITS ESSENTIAL PURPOSE

94. Since this cause of action has also been filed as a cause of action for a Declaratory Judgment to determine the rights and responsibilities of the Plaintiff and the Defendant as a self-insurance carrier for the Plaintiff’s employer, for personal injuries arising out of and in the course and scope of the Plaintiff’s employment, that in the event that this Court determines that the Tennessee Workers’ Compensation Reform Act is unconstitutional and cannot be applied to the Plaintiff’s injuries, and/or that this Court then construe the rights and responsibilities of the parties and/or thereafter transfer this cause of action to the Knox County Circuit Court for adjudication as to whether the Plaintiff is entitled to unliquidated damages for a personal injury cause of action for the Defendant having failed to provide the Plaintiff a safe workplace for which the Plaintiff would then be entitled to all rights and remedies as required by law. While it has long been established that the employer has the right in the first instance to select a physician for medical care,

as a matter of first impression and given the multitude of medical providers that should be available to an injured worker, the Plaintiff contends that as a matter of first impression that requiring an injured worker to accept medical care by a select or limited group of medical providers is an arrangement, accommodation, or an attempt to injuriously affect free trade and commerce in the state of Tennessee such that as a part of the scheme and action taken by the Defendants in this case is such that the natural intended result of the Defendant's actions is an illegal restraint on trade and/or an accommodation in trust in limited form, intending to stifle competition, and to create a monopoly for the rendering of medical care for work-related injuries and/or occupational diseases. The Plaintiff contends that the actions of the Defendants and that T.C.A. Section 50-6-204 violate Tennessee's Common Law prohibition against unreasonable restraint of trade and constitute Common Law monopolization of trade for medical services. As a direct and proximate result of the Defendants' actions, injured workers are deprived of the best quality of medical services that could be provided, and competition for those medical services is stifled. The Plaintiff contends that such action is irrational, arbitrary, and unreasonable and constitutes a monopolization of medical care when taken to its extreme, results in socialized medicine and/or employer and insurance carrier-controlled medicine and/or monopolized medicine and an unlawful restraint of trade. The Plaintiff will show unto the Court that it has long been established that contracts, agreements, arrangements, or accommodations, in whatever form or name, are contrary to public policy and should be held void when they tend to impair free competition and fair trade and to enhance or control price to the injury of the public.

95. The right of access to our court's system or the Open Courts Doctrine as previously discussed was firmly established in the Tennessee Constitution, more specifically Article I, Section 17. The right of access to our courts is a fundamental right which should not be impeded by an administrative bureaucracy as more recently acknowledged by Justice Roberts in writing the opinion of the United States Supreme Court in the case of Securities Exchange Commission v. Jarkesy et al, __ U.S. ___, No. 22-859, 2024 U.S. Lexis 2847 (decided June 27, 2024). It is the Plaintiff's position that she is entitled to have her claims for work injuries determined by a member of the Judicial Branch of government and/or a jury and not the Executive Branch of government in keeping with the rights that were guaranteed to her both at Common Law and pursuant to Tennessee's Open Courts Doctrine previously discussed and established through Article I, Section 17 of the Tennessee Constitution as well as Article I, Section 6 of the Tennessee Constitution.

96. An inherent flaw of the Workers' Compensation Reform Act of 2013 is the fact that the Bureaucratic process permits an unconstitutional invasion of the Judiciary's power to find or determine facts. With the passage of both T.C.A. Section 50-6-237 and T.C.A. Section 50-6-238, the Legislature has pre-determined or mandated an adjudication of issues or facts (or someone could argue pre-engineered) and thereafter allow Workers' Compensation Judges who are Executive Branch employees appointed by or indirectly appointed by the Governor to determine issues of credibility and issues of evidence outside of the Judicial Branch of government and exclusively to be determined by the Executive Branch in a system that does not require a record of the proceedings to be

maintained. The Plaintiff further contends that by the enactment of the Tennessee Workers' Compensation Reform Act and that by mandating a presumption of correctness of the findings of the Executive Branch, the Tennessee General Assembly has allowed a pre-determined and/or mandated result of an adjudication of a Workers' Compensation claim by mandating that the Tennessee Supreme Court and/or its special panel engage in a fait accompli for which the Tennessee Supreme Court is thereafter powerless to adjudicate in as much as there is a presumption of correctness of the findings of the Executive Branch with no requirement as established in a Court of Record by an Article VI Judge, such as the Knox County Chancery Court, to determine the credibility of witnesses or to review the evidence submitted. At the same time of the passage of the Tennessee Workers' Compensation Reform Act of 2013, the Legislature has withheld from the Tennessee Supreme Court or this Court and any other Court, the power to assess the factual basis or credibility of witnesses, all of which plainly violates the Separation of Powers Doctrine. Such a process should be held to constitute an unconstitutional, impermissible invasion of the Judiciary's exclusive power to find facts and gives a pre-determinative effect to the Executive Branch when the testimony of various witnesses might be different and sometimes dramatically so.

97. By the passage of T.C.A. §50-6-237 and T.C.A. §50-6-238, the Tennessee General Assembly engaged in high jacking of Judicial powers and took what away what was traditionally and purely Judicial functions, violating the Separation of Powers Doctrine and simultaneously denying due process and other safeguards to which the Plaintiff had heretofore been entitled and in essence robbed the Plaintiff of her day before a true Trial

Court. This procedure in light of the most recent passage of T.C.A. Section 4-5-326 should be held in violation of established public policy as well as a violation of the Plaintiff's fundamental right to have her case determined and/or adjudicated by the Judicial Branch of government in Tennessee.

98. Prior to the enactment of the Tennessee Workers' Compensation Act, the Plaintiff was entitled to have any claims for work injuries determined by a trial by jury as a fundamental right established by Article I, Section 6 of the Tennessee Constitution. The right of trial by jury was not only sanctioned and secured by Article I, Section 6 of the Tennessee Constitution, but it is a right to a trial by jury as it existed and was enforced in use according to the course of the Common Law under the laws and Constitution of North Carolina at the time of the formation and adoption of the Tennessee Constitution in 1796. See Garner v. State, 13 Tenn. 159, 13 Tenn. 159 at 160 (Tenn. 1833). In a claim for personal injuries, it is the Plaintiff's fundamental and Constitutional right to have every issue of fact and evidence determined by a jury with proper instruction by an Article VI Court. See Harbison v. Briggs Brothers Paint Mfg. Co., 209 Tenn. 534, 354 S.W.2d 464 (Tenn. 1962). United States Supreme Court Justice Roberts also underlined the importance of the right to a trial by jury as it existed at Common Law in the case of Securities Exchange Commission v. Jarkesy et al, ___ U.S. ___, No. 22-859, 2024 U.S. Lexis 2847 (decided June 27, 2024).

99. By the passage of the original Tennessee Workers' Compensation Reform Act in 1919, the Tennessee General Assembly took away the right to a trial by jury, but in return,

promised injured workers and employers that as a matter of a fundamental right that they would be entitled to a trial before an Article VI Judge which is established through our Open Courts Doctrine, and as previously discussed, injured workers and employers would have the fundamental rights of having their cases determined by the Judicial Branch of government. However, nearly one hundred years later, the Tennessee General Assembly by the passage of the Tennessee Workers' Compensation Reform Act of 2013, radically took away the fundamental rights of an injured worker to have his or her day in court, a fundamental right that was again recognized by implication in Scott v. Nashville Bridge Company, 143 Tenn. 86, 223 S.W. 844 (Tenn. 1920) and as reestablished in the case of Lynch v. City of Jellico et al and Lazano v. Lincoln Memorial University et al, 205 S.W.3d 384 (Tenn. 2006).

100. In view of the nature and purpose of Workers' Compensation, the Tennessee Workers' Compensation Act was passed by the Legislature as a complete substitute for all previous remedies that were available on the part of an employee at Common Law. The general purpose of Workers' Compensation is to provide compensation for the loss of earning power with a loss of earning capacity sustained by workers through injuries in their industry. The provisions of the Tennessee Workers' Compensation Reform Act were written into the employment relationship throughout the State of Tennessee. The 2013 Workers' Compensation Reform Act consolidates Workers' Compensation oversights within the Executive Branch of the Tennessee Department of Labor and Workforce Development. There is no longer a court system, albeit the Legislature wants to call Executive employees Courts of Workers' Compensation. However, a review of the

legislation previously discussed simply illustrates that it is a bureaucracy with the allocation of the cost of administration to the taxpayers of the State of Tennessee independent of the Judiciary with the exception of what can only be referred to as a perfunctory review.

101. The Plaintiff requests this Court to reconsider the case of Pope v. Nebco of Cleveland, Inc., 585 S.W.3d 874 (Tenn. 2018) and the more recent Special Appeals Panel case of Worrell v. Obion, No. W2023-01082-SC-R3-WC filed July 19, 2024 and to hold that T.C.A. §50-6-225(a) and T.C.A. §50-6-217(a)(2)(B) violate the constitutional separation of powers requirement because there is no longer a determination of facts by a Judicial tribunal, but a perfunctory review of the Workers' Compensation Appeals Board with a presumption of correctness even though the Plaintiff should be entitled to her day in Court pursuant to Tennessee's Open Court's Doctrine, and/or more specifically, Article I, Section 17 of the Tennessee Constitution. The Plaintiff urges this Court to hold that the United States Constitution and the Tennessee Constitution prevent the Tennessee General Assembly from "withdrawing from Judicial cognizance any matter which, from its nature, is the subject of a suit at the Common Law." This request is in keeping with the United States Supreme Court case of Securities Exchange Commission v. Jarkesy et al, ___U.S.___, No. 22-859, 2024 U.S. Lexis 2847 (decided June 27, 2024).

102. The Plaintiff would show unto the Court that her challenge to the above-described statutes and to the overall adoption of the Tennessee Workers' Compensation Reform Act of 2013 alone on a violation of Tennessee's Open Courts Clause is a matter of first

impression in a challenge to that act, that has not been considered by precedent in a published opinion given the findings that access to our courts is a fundamental right. More importantly, all power should be inherent in the people of Tennessee, and all free governments are founded on their authority and instituted for their peace, safety, and happiness for the people of people, and there should be limitations and restrictions upon Legislative power pursuant to Article I, Section 1 of the Tennessee Constitution.

THE CAP ON ATTORNEY FEES FOR INJURED WORKERS IS UNCONSTITUTIONAL

103. The Plaintiff would show unto the Court that because the Defendant has not provided the Plaintiff the services which the Plaintiff needs, the Plaintiff had to secure the services of an attorney to secure medical care and treatment. There appears to be no mechanism in place from which the Plaintiff could obtain payment for the services of an attorney to secure medical care and treatment except under the Common Law rule of implied indemnity as adopted in the State of Tennessee or for this Court to hold that the denial for payment of attorney fees for securing medical care and treatment is a denial of equal protection and/or due process as hereinafter discussed.

104. The Plaintiff would show unto the Court that an award for attorney fees pursuant to T.C.A. Section 50-6-226(d)(1)(B) is discretionary and subject to review only under an abuse of discretion standard, but in the case of the Plaintiff, the review for obtaining attorney fees has now been granted to the Executive Branch and/or the Court of Workers' Compensation Claims when the approval for attorney fees should be made by an Article VI Judge or Judicial Tribunal as a part of the Separation of Powers Doctrine as

recognized in the State of Tennessee. The Plaintiff would show that an Executive Branch Administrative Agency as in the instant case, the Court of Workers' Compensation Claims, abuses its discretion when it causes an injustice by applying an incorrect legal standard and reaches an illogical result or resolves a case on an erroneous assessment of the evidence or relies on reasoning that causes an injustice. See Gonsewski v. Gonsewski, 350 S.W. 3d 99, 105 (Tenn. 2011).

105. In the instant case, the Defendant employer and its personnel are now unwilling to provide the Plaintiff with temporary total disability benefits to which the Plaintiff was entitled when the Plaintiff's treating physician released her prematurely to return to work when she had not reached maximum medical improvement. It is the Plaintiff's position that T.C.A. Section 50-6-226(d)(1)(B) applies to injuries that occur after July 1, 2021 and was in effect at the time of the Plaintiff's injuries. While this statute allows for the assessment of attorney fees when the employer wrongfully fails to timely initiate any of the benefits to which the Plaintiff is entitled, including temporary total disability benefits, the assessment of attorney fees lies within the discretion of the Executive Branch of government for which the Plaintiff contends is a violation of the Separation of Powers. The Plaintiff would show unto the Court that as a result of temporary benefits not being provided to the Plaintiff that the Plaintiff should be compensated attorney fees for the prosecution of her claim for benefits.

106. Since the passage of the Tennessee Workers' Compensation Reform Act of 2013, pursuant to T.C.A. Section 50-6-226, fees of attorneys for services to employees are now subject to the approval of a Workers' Compensation Judge, an Executive Service Employee, before whom a Workers' Compensation claim is pending as appropriate; provided however, that no attorney fees can be charged employees in excess of 20% of the amount of the recovery or award to be paid by the party employing the attorney. Additionally, contrary to previous established law, instead of attorney fees being approved by an Article VI Judge or a member of the Judicial Branch of Government, the Bureau of Workers' Compensation, an Executive Department Service Employee shall deem the attorney fees to be reasonable if the fee does not exceed 20% of the award to the injured worker, or in cases governed by T.C.A. Section 50-6-207(4), 20% of the first 450 weeks of the award. All attorney fees for attorneys representing the employer, however, are not subject to review for reasonableness of the fee, nor are they required to be approved by the Workers' Compensation Judge, an Executive Service Employee, until those services reach a threshold in excess of \$10,000. More importantly, in cases that proceed to trial pursuant to T.C.A. Section 50-6-226(a)(2)(B), an employee's attorney is required to file an application for approval for proposed attorney fees by the Executive Branch. When the award of an attorney's fee exceeds \$10,000, then the Court shall make specific findings as to factors that justify the fee as provided by Tennessee Supreme Court Rule 8, RPC 1.5. In essence, T.C.A. Section 50-6-226 requires a deferral to the Executive Branch of government for the approval of attorney fees, all of which the Plaintiff contends is in violation of the Separation of Powers Doctrine as long recognized in the State of Tennessee.

107. In a provision which operates as a “chilling effect” that precludes attorneys from taking cases of this nature, T.C.A. Section 50-6-226(b) provides that the charging or receiving of any fee by an attorney in violation of T.C.A. Section 50-6-226(a) shall be deemed an unlawful practice and render the attorney liable to disbarment; and further, that the attorney shall forfeit double the entire amount retained by the attorney to be recovered as in the case of debt by the injured person or the injured person’s creditor. The failure of the Defendants to initiate medical care on behalf of the Plaintiff forced the Plaintiff to seek the services of an attorney which serves only to increase the litigation time and expense associated with the processing of Workers’ Compensation benefits.

108. The Plaintiff would show unto the Court that because of the manner in which the Defendant has orchestrated a medical panel, and as a result of the Defendant’s failure to initiate medical benefits, the Plaintiff contends that she should also be entitled to attorney fees to secure medical care and medical monitoring for her traumatic injuries. In the alternative, the Plaintiff would request that this Court hold that the Plaintiff should be entitled to attorney fees under the Common Law theory of implied indemnity under established case law and the Common Law rule of Pulman Standard Inc. v. Abex Corporation, 693 S.W. 2d 336 (Tenn. 1985), wherein the State of Tennessee has adopted the Restatement (Second) of Torts, Section 914 (2) which holds as follows:

“One who through the tort of another has been required to act in the protection of his interests by bringing or defending an action against a third person is entitled to recover reasonable compensation for loss of time, attorney fees, and other expenditures thereby

suffered or incurred in the earlier action.” See Pulman Standard Inc. v. Abex Corporation, id at pg. 340.

109. The Plaintiff would show unto the Court that in the State of Tennessee, attorneys representing injured workers in Workers’ Compensation claims receive their fees out of the compensation awarded to the worker. By T.C.A. Section 50-6-226, the Legislature by the enactment of T.C.A. Section 50-6-226(a)(1) has delegated to the Tennessee Department of Labor and Workforce Development, the Workers’ Bureau of Workers’ Compensation Division, the authorization or power to determine whether an attorney fee is reasonable if the fee does not exceed 20% of the award to the injured worker, or in cases governed by T.C.A. Section 50-6-207(4), 20% of the first 450 weeks of the award. All attorney fees for attorneys representing employees shall be subject to review for reasonableness of the fee and shall be subject to the approval by a Workers’ Compensation Judge who is an employee of the Executive Branch of government. The Plaintiff would show unto the Court that under Tennessee’s Constitution, the Tennessee Supreme Court is vested with exclusive authority to regulate the practice of law and that this provision extends to the regulation of attorney fees.

110. In the instant case, the Plaintiff would request that this Court as a matter of first impression in a Workers’ Compensation case should hold that the regulation of attorney fees is included within the power to govern the practice of law. Because the Tennessee Supreme Court is vested with exclusive and inherent and constitutional authority to govern the practice of law. It is the Plaintiff’ position that under the Separation of Powers

Doctrine, the Tennessee General Assembly should not delegate the regulation of attorney fees to the Legislature or the Tennessee Department of Labor and Workforce Development and the Bureau of Workers' Compensation and that the fee provisions of T.C.A. Section 50-6-226(a) through (c) are unconstitutional.

111. The Plaintiff would show unto the Court that after promulgating the Workers' Compensation Reform Act of 2013, the Legislature granted the Commissioner of the Tennessee Department of Labor and Workforce Development and the Bureau of Workers' Compensation, part of the Executive Branch of government, the full power to regulate and fix the fees of attorneys involved in Workers' Compensation cases.
112. The Plaintiff, as a part of this request for a Declaratory Judgment, also challenges the constitutionality of T.C.A. Section 50-6-226(a) through (b) on the basis that allowing the Executive Branch of Government to determine attorney fees is a violation of the Separation of Powers doctrine as established by the Tennessee Constitution, more specifically Article II, Section 2 of the Tennessee Constitution.
113. As a matter of public policy and concern for this Court and in reference to the discretion to be utilized by this Court on the award of attorney fees, the Plaintiff would show unto the Court that the Utah and Florida Supreme Courts have both rejected fee limitations on Constitutional grounds. See Injured Workers' Association of Utah v. State, 373 P.3d 14 (Utah 2016); Castellanos v. Next Door Co., 192 So.3d 431 (Fla. 2016). In

Florida, the restrictions effectively eliminated the Plaintiff's right to get an attorney which the Florida Supreme Court said was a "critical feature of the Workers' Compensation system." In Utah, the Utah Supreme Court found the restriction on attorney fees to violate the Separation of Powers Doctrine, concluding that the regulation of attorney fees is a Judicial function and could not be set by the Legislature.

114. The Plaintiff would show unto the Court that it should be a denial of equal protection and due process for the Court to deny the Plaintiff attorney fees to overcome a one-sided utilization review as a matter of public policy or to deny a Plaintiff the right to a remedy to correct a wrong. To ensure Judicial protection of the liberties contained within its Declaration of Rights, the Tennessee Constitution provides that "every man for an injury done in his lands, goods, person, or reputation, shall have remedy by due course of law." This "right to remedy clause" along with the "open court's clause" is found in Article I, Section 17 of the Tennessee Constitution that was seen by contemporaries of the Constitutional drafters as a cornerstone of our Judicial system. In 1821, for example, the Tennessee Supreme Court analyzed Article I, Section 17 of the Tennessee Constitution and its role in Tennessee law. In strident terms, the Court struck down an act of the Tennessee Legislature and emphasized the importance of Article I, Section 17 with its roots in a venerable Magna Carta:

"This clause refers to every possible injury which a man may sustain, and which affects him...and with respect to it, right and justice is to be done without sale, denial, or delay. In the Magna Carta, this restriction is upon Royal Power; in our country it is upon

Legislative and all other powers. See Townsend v. Townsend, 7 Tenn. 1, at 14 (Tenn.1821).

When there is a wrong there should be a remedy. Our United States Supreme Court Chief Justice John Marshall declared this principle years ago. “The very essence of civil liberty certainly consists of the right of every person to claim the protection of the laws, whenever he receives an injury.” Marbury v. Madison, 5 U.S. 1 Cranch 137 at 163 (1803).

115. As the ancient maxim instructs us: “Equity will not suffer a wrong to be without a remedy.” For the last decade, Tennessee workers have suffered many violations of their rights by a denial of representation for medical monitoring as well as a wrongful denial of medical benefits by an employer or its carrier under T.C.A. Section 50-6-204. As a matter of public policy, the Tennessee General Assembly amended T.C.A. Section 50-6-226 to correct this wrong. The time has now come for this Court and all other courts to finally restore Article I, Section 17 to its rightful place as a cornerstone of the Tennessee Constitution of Law to uphold the principles established by the Workers’ Compensation Reform Act of 2013 pursuant to T.C.A. Section 50-6-116 in accordance with the principles of statutory construction through the Reform Act in a manner favoring neither the employee nor the employer. The Plaintiff would show unto the Court that to deny the employee the ability to secure counsel and thereafter capping attorney fees as well as precluding the charging of a fee without the consent of the Department of Bureau of Workers’ Compensation, or in this case the Court of Workers’ Compensation Claims, results in a one-sided, pre-engineered denial or delay of surgery or medical monitoring.

The Plaintiff who is already injured, is many times destitute and cannot secure counsel or representation to prosecute a claim for medical care and treatment while the employer through its attorney is granted a carte blanche authorization to charge attorney fees up to an amount of \$10,000 without any oversight whatsoever.

116. More specifically, on July 3, 2024, Chief Judge Kenneth M. Switzer of the Court of Workers' Compensation Claims gave his Fourth of July greeting from the Bench of the Tennessee Court of Workers' Compensation Claims. In his greeting, Judge Switzer had this to say about the principles of fairness in government, "In reflecting on the Declaration of Independence, a list of grievances against the "King" and the grievances in the Declaration of Independence which form the roots of our Bill of Rights and other parts of our Constitution, Judge Switzer had this to say, "He" made Judges dependent on his rule alone for their tenure of office and the amount of their pay; created new offices and sent people to harass the citizens; tax without consent, and deprive them of trial by jury. The list goes on of other offenses that we today can't understand how the King got away with these things...but then look at the bottom for signatures of fifty-six men. These fifty-six individuals knew what they were doing was treasonous and that their very lives and fortunes were on the line. Think about that just for a moment. Would you have taken that bold step to tell the King he is a tyrant when he has the most powerful army in the world?

117. Now look out your window. Think about where you live and everything you have and rely on today. I get it that not everything is perfect for everyone. It wasn't in 1776

either. Mountains remain to be climbed; things need to change.” See From the Bench of the Tennessee Court of Workers’ Compensation Claims-Happy Fourth of July by Chief Judge Kenneth M. Switzer, Nashville July 3, 2024.

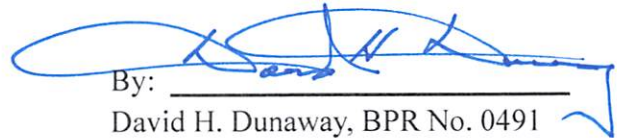
WHEREFORE, the Plaintiff demands:

- (1) That the Defendants answer this Amended Complaint within the time required by law, but not under oath, their oath being waived.
- (2) That the Plaintiff be granted a Declaratory Judgment holding such parts of the Tennessee Workers’ Compensation Reform Act of 2013 and more specifically, T.C.A. §50-6-242, T.C.A. §50-6-237, T.C.A. §50-6-238, T.C.A. §50-6-217, T.C.A. §50-6-218, T.C.A. §50-6-204, T.C.A. §50-6-102(14)(E), T.C.A. §50-6-204(k)(7), T.C.A. §50-6-204(a)(1)(D), T.C.A. §50-6-204(i), T.C.A. §50-6-207(4), and T.C.A. Section 50-6-226(a)(b) to be unconstitutional, arbitrary, capricious, illegal, void, and a violation of public policy of the State of Tennessee, Tennessee’s Constitution, the United States Constitution, and the public policy which has now been established by the United States Supreme Court.
- (3) That in accordance with Rule 57 of the Tennessee Rules of Civil Procedure and or in accordance with Rule 54 of the Rules of the Tennessee Supreme Court that the above cause of action for Declaratory Judgment be advanced for a speedy hearing and trial and/or that a Special Three-Judge Panel composed of the Trial Judge of the Judicial District which this case was originally assigned and a Trial Judge from each grand division of the state other than the grand division in which the action was originally filed be appointed in accordance with Section 3 of the Rules of the Tennessee Supreme Court.
- (4) That alternatively upon the hearing of this cause in the event that this Court determines the above statutes to be unconstitutional, that this Court determine the degree of disability sustained by the Plaintiff, the nature and extent of the same, and award her such benefits as he is justly entitled under the provisions of the Workers’ Compensation laws for the State of Tennessee and/or in the alternative, that this Court declare and construe the responsibilities of all parties in this case.
- (5) That in the event that this Court determines that the Plaintiff’s injuries are not covered under the Tennessee Workers’ Compensation Reform Act of 2013, that this Court adjudicate the rights of the parties and/or transfer this matter to the Knox County Circuit Court for a determination of the rights and responsibilities of the parties and to determine whether the Plaintiff has sustained unliquidated damages with a right to a jury trial.

- (6) That this Court declare and construe the rights and responsibilities of the Plaintiff and the Defendants.
- (7) That this Court award the Plaintiff such damages as well as costs, expenses, and attorney fees to which she may be entitled through the theory of Implied Indemnity and/or such other equitable relief to which she may be entitled under the law and evidence.
- (8) That the Plaintiff be granted such further and general relief to which she may be entitled under the law and evidence.

RESPECTFULLY SUBMITTED this 29th day of July, 2025.

KIMBERLEE GENTILE


By: _____

David H. Dunaway, BPR No. 0491

Attorney for Plaintiff

1606 Saint Ives Boulevard

Alcoa, TN 37701

dhdunaway@aol.com

(865) 617-7085

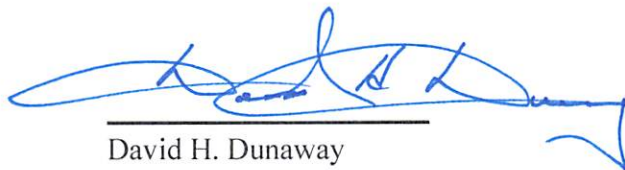
CERTIFICATE OF SERVICE AND NOTICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been served upon all interested counsel by placing this same in the United States mail with sufficient postage thereon to ensure delivery and or by email to:

Attorney General Jonathan Skrmetti
 Assistant Attorney Eric W. Donica
 425 5th Avenue North, 2nd Floor
 Cordell Hull Building
 P.O. Box 20207
 Nashville, TN 37202
Jonathan.skrmetti@ag.tn.gov
Eric.donica@ag.tn.gov

Michael J. King mking@painebickers.com
 Taylor A. Williams twilliams@painebickers.com
 Lindsey M. Collins lcollins@painebickers.com
 Paine, Bickers, Elder, King & Williams LLP
 900 S. Gay Street, Suite 2200
 Knoxville, TN 37902

Dated this 29th day of July, 2025.



David H. Dunaway
 Attorney for Plaintiff
 1606 Saint Ives Boulevard
 Alcoa, TN 37701
dhunaway@aol.com
 (865) 617-7085