



**In the Missouri Court of Appeals
Eastern District
DIVISION TWO
OPINION SUMMARY**

JOSEPH BANKS,)	No. ED91699
)	
Respondent,)	
)	Appeal from the Labor and Industrial
)	Relations Commission
)	
vs.)	Cause No. 00-153572
)	
SARAH STEELMAN, TREASURER OF)	
THE STATE OF MISSOURI,)	
CUSTODIAN OF THE SECOND INJURY)	
FUND)	Filed: March 17, 2009
)	
Appellants.)	
)	

The Second Injury Fund (hereinafter, “the Fund”) appeals from the judgment of the Labor and Industrial Relations Commission (hereinafter, “the Commission”), affirming the decision of the Administrative Law Judge which awarded Joseph B. Banks (hereinafter, “Claimant”) permanent total disability benefits. The Fund was not awarded a subrogation interest in Claimant’s third party recovery.

REVERSED AND REMANDED.

Divison II Holds: The Commission erred in failing to award the Fund a subrogation interest in Claimant’s third party recovery pursuant to Cole v. Morris, 409 S.W.2d 668 (Mo. 1966).

Opinion by: George W. Draper III, Judge

Roy L. Richter, P.J., concurs
and Lawrence E. Mooney, J.,
concurring opinion

Attorney for Appellant: Kareitha A. Osborne

Attorney for Respondents: Daniel Joseph Walkenhorst
Ellen Eschrich Morgan

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT.
IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND
SHOULD NOT BE QUOTED OR CITED.**