

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

MARIANNE BENNETT,

Appellant

v.

TREASURER OF THE STATE OF MISSOURI-  
CUSTODIAN OF THE SECOND INJURY FUND.

Respondent

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DOCKET NUMBER WD69128

DATE: **November 18, 2008**

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**Appeal From:**

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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**Appellate Judges:**

Division Four: Thomas H. Newton,C.J., Joseph M. Ellis and James Edward Welsh, JJ.

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**Attorneys:**

Truman E. Allen, Columbia, MO

Counsel for Appellant

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**Attorneys:**

Sarah E. Reichert, Jefferson City, MO

Counsel for Respondent

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**MISSOURI APPELLATE COURT OPINION SUMMARY  
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**MARIANNE BENNETT, Appellant, v. TREASURER OF THE STATE OF  
MISSOURI-CUSTODIAN OF THE SECOND INJURY FUND, Respondent**

**WD69128**

**Labor and Industrial Relations Commission**

Before Divison Four Judges: Newton, C.J., Ellis, and Welsh, JJ.

Marianne Bennett appeals the decision of the Labor and Industrial Relations Commission that it did not have jurisdiction over Bennett's motion to join her spouse as an additional party to her workers' compensation claim in which she was awarded permanent total disability benefits from the Second Injury Fund. Bennett contends that, pursuant to the Missouri Supreme Court's decision in *Schoemehl v. Treasurer of the State of Missouri*, 217 S.W.3d 900 (Mo. banc 2007), the Workers' Compensation Act (the Act) establishes a right to a continuation of permanent total disability benefits if an injured worker dies of causes unrelated to the work injury and leaves behind dependents. Bennett claims that the Commission's failure to accept jurisdiction leaves her spouse without legal means of determining his entitlement to benefits under the Act if he survives her.

**AFFIRMED.**

**Division Four Holds:**

The Commission did not have jurisdiction over Bennett's motion to join her spouse as an additional party to her workers' compensation claim. The *Schoemehl* case upon which Bennett relies no longer reflects the state of the law in Missouri. In response to the Missouri Supreme Court's decision in *Schoemehl*, the General Assembly amended several sections in Chapter 287 and enacted section 287.230.3, RSMo, which specifically says that it was the legislature's intent to reject and abrogate the holding in *Schoemehl* and all cases citing, interpreting, applying, or following *Schoemehl*. Moreover, case law has strictly limited recovery under *Schoemehl* to situations in which the injured worker's case was still pending before the Commission and when no determination had been made on the injured worker's claim against the Second Injury Fund for permanent total disability benefits. Thus, due to the amendments to Chapter 287 and the subsequent court decisions interpreting *Schoemehl*, recovery under *Schoemehl* is limited to claims for permanent total disability benefits that were pending between January 9, 2007, the date the Missouri Supreme Court issued its decision in *Schoemehl*, and June 26, 2008, the effective date of the General Assembly's amendments to Chapter 287. Bennett's claim was not pending during this time. *Schoemehl*, therefore, cannot be applied to allow the substitution of her spouse as a beneficiary of her permanent total disability benefits.

**Opinion by James Edward Welsh, J.**

November 18, 2008

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THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.