

EMPLOYER’S WORKERS	§	IN THE DISTRICT COURT
COMPENSATION INSURER	§	
Plaintiff,	§	
	§	
	§	
v.	§	
	§	TARRANT COUNTY, TEXAS
PARENT, INDIVIDUALLY	§	
AS BENEFICIARY AND AS NEXT	§	
FRIEND FOR CHILD ONE	§	
AND CHILD TWO,	§	
MINOR BENEFICIARIES	§	
Defendant.	§	00 <sup>TH</sup> JUDICIAL DISTRICT

**FINAL JUDGMENT**

On Monday, February 26, 2007, the Court called this case for trial on the regular trial docket of the Court. Plaintiff, Employer’s Workers Compensation Insurer, appeared by its corporate representative and by counsel of record and announced ready. Defendant Parent, Individually as Beneficiary and as Next Friend for Child One and Child Two, Minor Beneficiaries, appeared in person and by counsel of record and announced ready. The Court determined it had jurisdiction over the subject matter and the parties in this proceeding. A jury having been previously demanded, a jury consisting of twelve qualified jurors was duly impaneled and the case proceeded to trial. The Plaintiff presented evidence, and then rested and concluded its case.

At the conclusion of Plaintiff’s case, the Court granted a directed verdict in favor of the Defendant with respect to the issue of whether decedent Employee was acting within the course and scope of his employment at the time of his motor vehicle accident that resulted in his death finding that Plaintiff had failed to present any evidence regarding such issue.

The Defendant presented evidence in support of her case, and then rested and concluded her case. On February 28, 2007, at the conclusion of all of the evidence, the Court submitted the sole

question of fact in the case to the jury. On February 28, 2007, the Court read the jury's answer to the question, and announced that the jury's verdict would be accepted. The charge of the Court and the verdict of the jury are incorporated in this judgment for all purposes by reference. The jury returned a verdict in favor of the Defendant as follows:

Question No. 1:

Was Employee in a state of intoxication at the time of the accident?

Answer "Yes" or "No."

Answer: NO

Because it appears to the Court that the verdict of the jury was for the Defendant Parent, Individually as Beneficiary and as Next Friend for Child One and Child Two, Minor Beneficiaries, and against the Plaintiff, Employer's Workers Compensation Insurer, judgment should be and is now rendered on the verdict in favor of the Defendant Parent, Individually as Beneficiary and as Next Friend for Child One and Child Two, Minor Beneficiaries, and against the Plaintiff, Employer's Workers Compensation Insurer.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that as a result of the judgment rendered herein, the final Decision of the Texas Workers' Compensation Commission Appeals Panel No. 000, Appeal No. 000000, Docket No. FW-00-000000-00-CC-FW00, entitled "*In the Matter of Employee, Deceased; Insurer v. Parent and Children*" is upheld and affirmed, and that this Court hereby finds that (1) Employee was acting within the course and scope of his employment at the time of his motor vehicle accident that resulted in his death, (2) Employee was not in a state of intoxication at the time of his motor vehicle accident that resulted in his death.

IT IS, FURTHER, ORDERED, ADJUDGED AND DECREED by the Court that since (1) Employee was acting within the course and scope of his employment at the time of his motor vehicle accident that resulted in his death, and (2) Employee was not in a state of intoxication at the time of

his motor vehicle accident that resulted in his death, that Plaintiff, Employer's Workers Compensation Insurer, shall continue to be liable for any benefits relating to the death of Employee.

FURTHER, it appearing to the Court that Defendant filed a claim for the purpose of collecting attorneys' fees as provided for in Section 408.221(c), Texas Labor Code; and it further appearing that Defendant submitted written evidence in support of such attorneys' fees; and it further appearing that, in accordance with the agreement of the parties announced in open court on April 13, 2007, that such reasonable and necessary attorneys' fees are in the amount of \$90,000, and that such reasonable and necessary expenses are in the amount of \$5,000; and there being no objection to such fees and expenses by the Plaintiff; the Court finds that such fees and expenses are reasonable and were necessarily incurred in the defense of the case and that such fees and expenses should be paid by the Plaintiff to Smith & Smith, counsel for the Defendant. Therefore,

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that Plaintiff, Employer's Workers Compensation Insurer, shall pay to Smith & Smith the sum of \$95,000.00 for which let execution issue.

IT IS ACKNOWLEDGED BY THE COURT, that a copy of this Final Judgment was served on the Division of Workers' Compensation, Texas Department of Insurance, as required by the Texas Labor Code, Section 410.258, and that the Court has received no objection from the Division of Workers' Compensation in accepting and entering this Final Judgment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that, in accordance with the agreement of the parties announced in open court on April 13, 2007, the costs of court incurred in the above entitled and numbered cause shall be paid by the party incurring same.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that all writs and processes for the enforcement and collection of this judgment may issue as necessary.

IT IS FINALLY ORDERED, ADJUDGED AND DECREED by the Court that all other relief not expressly granted herein for or against every party to this suit is denied. This Final Judgment finally disposes of all parties and all claims. Finally, the Court finds that, in accordance with the agreement of the parties announced in open court on April 13, 2007, the parties have waived any right to appeal this Final Judgment.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2007 at Fort Worth, Texas.

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District Judge  
00<sup>th</sup> JUDICIAL DISTRICT COURT