

IN THE SUPREME COURT OF OHIO

STATE, *ex rel.* BAJA MARINE  
CORPORATION,

Appellant,

vs.

INDUSTRIAL COMMISSION OF OHIO,  
et al.,

Appellees.

: Case No. 06-0974

:  
: On Appeal from the Franklin County  
: Court Of Appeals  
: Tenth Appellate District

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**APPELLANT BAJA MARINE CORPORATION'S  
REQUEST FOR ORAL ARGUMENT**

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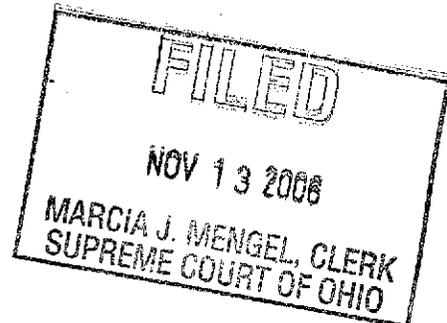
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**APPELLANT BAJA MARINE CORPORATION'S  
REQUEST FOR ORAL ARGUMENT**

Pursuant to Ohio Supreme Court Practice Rule IX, Section 2(A), Appellant Baja Marine Corporation ("Baja") respectfully moves for and requests oral argument on the merits of this appeal. This appeal, which arose when Baja sought a writ of mandamus following an adverse ruling by Respondent The Industrial Commission of Ohio ("Industrial Commission") in a workers' compensation case, originated in the Franklin County Court of Appeals, Tenth Appellate District, and is an appeal of right to the Ohio Supreme Court. Baja requests oral argument in the belief that the significant issues raised by this appeal can be more fully presented to the Court with such an argument. The grounds for this request are more fully set forth in the Brief in Support which follows.

**BRIEF IN SUPPORT**

In this appeal, Baja asks the Supreme Court of Ohio to reverse the decision of the Court of Appeals and enter a writ of mandamus ordering the Commission to vacate, set aside and hold for naught its December 22, 2004 Order granting Claimant Cynthia S. Egelston's ("Claimant's") application for non-working wage loss compensation. Baja argues that the Industrial Commission abused its discretion in awarding such compensation based on the opinion of a doctor who, on the basis of the same examination, stated that Claimant: (1) could not do light or modified work; and (2) could do modified work four hours per day, five days per week. Baja argues that the Court of Appeals' decision is inconsistent with *State ex rel. Weingold & Co. v. Indus. Comm.* (2002), 97 Ohio St.3d 44, 46, in which this Court held that, "internally inconsistent doctor's reports cannot be 'some evidence' supporting a commission decision."

Baja requests oral argument because the issue before this Court is significant and far-reaching. In a high volume administrative system such as workers' compensation, the risk of manipulation of the system is real. In *Weingold*, this Court viewed skeptically the inconsistent reports of a doctor which seemed geared toward providing whatever opinion would obtain requested benefits for a claimant. In this case, the inconsistency of a doctor's opinions and the implications if such inconsistent opinions can serve as the basis of an award are at issue.

While the parties have briefed the issues on appeal, Baja believes that the granting of oral argument will provide the parties a greater opportunity to present their arguments and the Court a greater understanding of the matters at issue. Given the significance of the issues presented and the opportunity for a fuller understanding of those issues, Baja respectfully asks that the Court schedule oral argument in this case.

Respectfully submitted,

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**PROOF OF SERVICE**

I hereby certify that on this 10th day of November, 2006 a copy of Appellant Baja Marine Corporation's Request for Oral Argument was sent by ordinary U.S. Mail, first-class postage prepaid, to:

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