

**IN THE SUPREME COURT OF OHIO
CASE NO. 05-1689**

State of Ohio, ex rel.	:	
David M. Gross,	:	
	:	
Appellee,	:	Case No. 05-1689
	:	
v.	:	On Appeal from the Franklin County
	:	Court of Appeals, Tenth Appellate
	:	District
	:	
The Industrial Commission of Ohio, et al.,	:	
	:	
Appellants.	:	

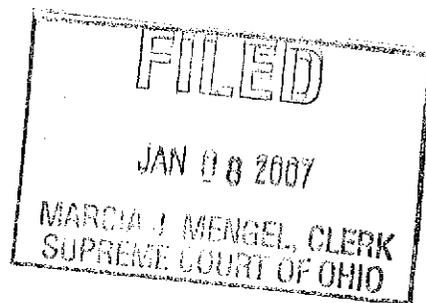
**MEMORANDUM OF THE OHIO ACADEMY OF TRIAL LAWYERS,
AS *AMICUS CURIAE*, IN SUPPORT OF APPELLEE'S,
DAVID M. GROSS, MOTION FOR RECONSIDERATION**

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MOTION FOR LEAVE

Pursuant to Supreme Court Rule XI, now come *amicus curiae*, the Ohio Academy of Trial Lawyers (Academy), and moves this Court for leave to file a Motion in Support of Appellee-Relator's Motion for Reconsideration.

Because significant legal repercussions will occur due to this *Per Curiam* decision, the Academy has joined in this action as *amicus curiae* in support of David Gross' position. The Academy believes the issue before this Court is of crucial significance to the future of the workers' compensation system. The Academy asks this Court to reconsider its *Per Curiam* decision finding that Gross' firing stemming from his negligence bars the payment of temporary total disability compensation.

STATEMENT OF INTEREST

The Ohio Academy of Trial Lawyers was founded in 1954. It is an organization of over 2,000 attorneys dedicated to the protection of Ohio's consumers, workers and families. In furtherance of its ideals, the Academy has appeared in numerous cases before the Ohio Supreme Court through the submission of *Amicus Curiae* Briefs. Inasmuch as The Academy was originally known as the National Association of Claimant's Counsel, Ohio Chapter, it appreciates the opportunity to submit this brief as *amicus curiae*.

The Ohio Academy of Trial Lawyers files this memorandum in support of Gross' request for Reconsideration to ask this Court to reconsider its decision.

LAW AND ARGUMENT

PROPOSITION OF LAW:

ALL INJURIES, EXCEPT THOSE PURPOSELY SELF-INFLICTED, ARE FULLY COMPENSABLE INDEPENDENT OF THE QUESTION OF NEGLIGENCE, FAULT OR ASSUMPTION OF RISK

This *Per Curiam* decision so offends the beneficent purposes for which the Ohio Workers' of Compensation system was created and so destroys the carefully crafted balance between employers and employees stabilizing the workers' compensation system that it demands this Honorable Court's Reconsideration. The legislative history of the statute, Supreme Court precedent, and the factual findings of this case buttresses this request.

Historically, an injured worker could only recover damages by bringing an action at common law against the employer and alleging and proving fault upon the part of the employer. The employer had the "unholy trinity of common law defenses"—contributory negligence, the fellow servant rule, and the doctrine of assumption of risk—available to defeat the action. *Van Fossen v. Babcock & Wilcox Co.* (1988), 36 Ohio St.3d 100, 522 N.E.2d 489. An Ohio Commission Study found that under this system few employees recovered judgments sufficient to protect their families. Report of Ohio Employer's Liability Commission, pt. I, XXXV-XLIV (1911). This court summarized the conclusions of the Commission in *State ex rel. Yaple v. Creamer* (1912), 85 Ohio St.3d 349, 97 N.E. 602:

Substantially its conclusion are, that the system which has been followed in this country, of dealing with accidents and industrial pursuits, is wholly unsound, that there is an intelligent and wide spread public sentiment which calls for its modification and improvement, and that the general welfare requires it. That there has been enormous waste

under the present system, and that the action for personal injuries by employee against employer no longer furnishes a real and practical remedy, annoys and harasses both, and does not meet the economic and social problem which has resulted from modern industrialism.

A no-fault solution was introduced to replace the common law system when the Ohio General Assembly enacted the first law in 1911 pertaining to industrial injury compensation (102 Ohio Laws 524), followed by the 1912 constitutional adoption of Section 35, Article II. This Court in *Van Fossen v. Babcock & Wilcox Co.* (1988), 36 Ohio St.3d 100, 522 N.E.2d 489, had this to say about the constitutional amendment:

The constitutional provision and the derivative legislative Acts were public policy trade-offs. Employees relinquished their right to bring common-law actions against their employers in exchange for no-fault recovery, i.e., automatic entitlement to reduced benefits for such injuries. In addition, the employees would receive compensation considerably earlier. This trade-off, which obtained for the employee a certain and speedy recovery in exchange for granting a more limited liability to the employer, benefits employers, employees and the public alike.

Id. at 110.

The essence of the system as a no-fault recovery is important to both employees and employers alike. The highly respected employer's attorney, Robert "Buz" Minor, commented on its importance to employers when testifying on November 9, 2004, on HB 498, the intentional tort statute, before the Commerce and Labor Committee of the Ohio House of Representatives. Mr. Minor explained:

In 1913, this legislative body ended decades of litigation arising from workplace accidents and created a comprehensive no-fault insurance system called workers' compensation. No longer could an employee or his family have to demonstrate employer fault in order to recover for a work-related injury. No longer would an employer be able

to argue that the employee's own negligence created his injury, and thus, barred a family's recovery. Irrespective of any degree of employee fault, the system created by your predecessors was a comprehensive program which now provides, among other things: 100 percent paid medical benefits, swift, certain and fair compensation to replace economic loss; lifetime benefits for those removed from the workplace; and lifetime benefits for surviving spouses...In return for this no-fault system, employers were granted...absolute immunity from lawsuits for injuries occasioned in the course of employment. (Exhibit 1).

Thus, the no-fault essence underlying the Ohio workers' compensation system is the essential element of the compensation compact between employers and employees.

The *Per Curiam* opinion makes light of this essential element by noting that "Gross offers a thought-provoking argument" but discounts it because "Gross *willfully* ignored repeated warnings." By inserting this willful standard, the *Per Curiam* opinion is engaging in a legislative rewriting of the workers' compensation law. See Chief Justice Moyer's dissent in *State ex rel. Price v. Central Services, Inc.*, 97 Ohio St.3d 245, 2002-Ohio-6397.

The term "willful" was actually part of the original 1911 workers' compensation law, which provided for an employee's election of remedies between workers' compensation benefits and the common-law action against the employer whenever an injury resulted from a willful act committed by the employer, or whenever the employer failed to comply with lawful safety requirements. G.C. 1465-671 (102 Ohio Law 529). When extensive litigation arose due to the lack of a definition of the term "willful acts," the General Assembly amended the statute in 1914 by defining "willful" as an act done "knowingly and purposely with the direct object of injuring another." (104 Ohio Law 194). This court subsequently held in *Gildersleeve v. Newton Steel Co.* (1924), 109 Ohio

St. 341, 142 N.E. 678, that a willful act “imports an act of will and design and of conscious intention to inflict injury upon some person. Gross’ negligence or wantonness can no longer be a willful act under this section, unless conjoined with a purpose or intention to inflict such injury.” Thus, “willful” was equated with more than negligence but with the intent to inflict an injury. Thereafter, due to extensive litigation, G.C. 1465-76 and the term willful was repealed, and the remedy provided under the workers’ compensation laws was made the exclusive remedy by the amendment to Section 35, Article II, effective January 1, 1924. *Van Fossen v. Babcock & Wilcox Co.*, (1988), 36 Ohio St.3d 100, 522 N.E.2d 489.

Fifteen years later, this court had the opportunity to determine whether an employee who was injured after willfully ignoring his employer’s instructions was prohibited from receiving workers’ compensation benefits. In *Laudato v. Hunkin-Conkey Construction Co.*, (1939), 135 Ohio St. 127, 19 N.E.2d 898, this court declined to do so upholding the no-fault nature of the system by finding that only those injuries “willfully self-inflicted” prohibit the compensability of a claim. This holding has never been reversed and the *Per Curiam* opinion made no attempt to review this holding according to the instructions of *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849.

Consistent with *Laudato*, the present workers’ compensation statute, R.C. § 4123.54(A)(1), prohibits compensation only in cases of injury “purposely self-inflicted.” The record contains no evidence that Gross attempted to purposely self-inflict his injury nor is there any finding by the Industrial Commission of such. Thus, the *Per Curiam* opinion’s insertion of a willful negligence standard to deny compensation is supported

neither by prior Supreme Court precedent, the workers' compensation statute, or the factual record.

Even assuming that the employer intended to argue that Gross' injury was "purposely self-inflicted," the Academy contends that the employer did not properly assert such a defense and furthermore, waived such defense. Contending that Gross' injury was purposely self-inflicted is actually a "right to participate" defense. In other words, evidence that the injury was purposely self-inflicted would mean the injury occurred outside the scope of employment. The Bureau of Workers' compensation allowed Mr. Gross' claim and awarded him temporary total disability benefits by its December 8, 2003 order. (Exhibit 2). No appeal was filed to the order so the employer waived such defense.

Nevertheless, the employer subsequently filed a motion on March 2, 2004, requesting the termination of Gross' temporary total disability compensation on February 13, 2004, "based upon the grounds that the injured worker voluntarily abandoned his employment by his own actions." Gross obviously did not actually take any action on February 13, 2004 as he was temporarily totally disabled from his burns on that date. However, that was the date the employer terminated his employment for violation of the company's handbook because he allegedly caused his own injury on November 26, 2003, by boiling water in a cooker to clean it.

The justification for the voluntary abandonment rule emanates from proof of causal relationship between the employee's industrial injury and the loss which the requested benefits are designed to compensate. *State ex rel. Baker v. Indus. Comm.*, (2000) 89 Ohio St.3d 376, 2000-Ohio-168, 732 N.E.2d 355. In the instant case, is there

really any doubt that Mr. Gross' economic loss was directly tied to his injury and not to this contrived firing? The Academy suggests that no reasonable argument can be made to the contrary. Furthermore, when did this 16 year old abandon his job? Was it before the injury when he boiled the water or as soon as the boiled water began burning him? The silliness of this fiction is absurd and permits the voluntary abandonment rule to overwhelm the sanctity of the no-fault system.

In addition, it must be remembered that the Bureau awarded Mr. Gross temporary total benefits by its order of December 8, 2003. The employer did not appeal this order. Voluntary abandonment is an affirmative defense which the employer has the burden to raise. *State ex rel. S. Rosenthal Co. v. Indus. Comm.*, 10th Dist. No. 03AP-113, 2004-Ohio-549, ¶ 7. By failing to appeal the Bureau's December 8, 2003 order which awarded claimant temporary total disability benefits, the employer waived such defense and is barred from subsequently raising it. *Mills v. Whitehouse Trucking Co.*, 40 Ohio St.2d 55, 320 N.E.2d 668. Gross' actions allegedly leading to his termination occurred on November 26, 2003, not February 13, 2004. The employer clearly waived its defense by not appealing the Bureau's order of December 8, 2003. "Regardless of whether the appropriate term of art is waiver, failure to exhaust administrative remedies, merger and bar, estoppel, or *res judicata*, the result is the same." *State ex rel. Diaz v. Indus. Comm.*, 88 Ohio St.3d 281, 2000-Ohio-327.

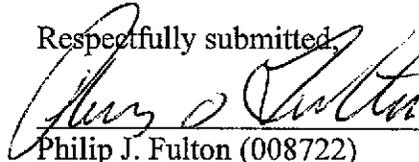
CONCLUSION

In her well-reasoned dissent, Justice Stratton predicts this *Per Curiam* decision will place the workers' compensation system on a slippery slope toward assessing fault in industrial accidents. Injured workers will now have to prove not only that the injury

occurred in the course of and arising out of the employment but also without any fault on their part. It is easy to predict that every employer will place in their handbooks a provision that unsafe work practices causing an industrial injury will result in job termination. This *Per Curiam* opinion will thus be used to deny injured workers compensation contrary to the intent of the constitution and the workers' compensation statute. It is safe to say it will also increase litigation and the uncertainties which surround that litigation returning us full circle to the disastrous economic consequences caused by industrial accidents which led to the development of the no-fault system almost one hundred years ago.

The Academy pleads that this Honorable Court reconsider this *Per Curiam* decision to prevent these dire consequences from occurring.

Respectfully submitted,



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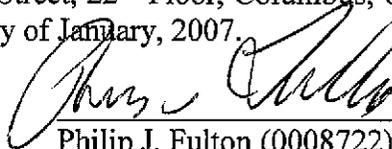
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Counsel for *Amicus Curiae*,

Ohio Academy of Trial Lawyers

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing "Memorandum of the Ohio Academy of Trial Lawyers, As *Amicus Curiae*, In Support of Appellee-Relator's, David M. Gross, Motion for Reconsideration," as served upon Gary D. Plunkett, Hochman & Plunkett, 3077 Kettering Blvd., Point West, Suite 210, Dayton, OH 45439, Edna Scheuer, Scheuer, Mackin & Breslin, 11025 Reed Hartman Highway, Cincinnati, OH 45242, and Andrew Alatis, Assistant Attorney General, Workers' Compensation Department, State of Ohio, 150 E. Gay Street, 22nd Floor, Columbus, OH 43215, postage prepaid, by regular U.S. Mail, this 8th day of January, 2007.



Philip J. Fulton (0008722)

**TESTIMONY OF THE OHIO SELF-INSURERS' ASSOCIATION
BEFORE THE COMMERCE AND LABOR COMMITTEE OF THE
OHIO HOUSE OF REPRESENTATIVES**

November 9, 2004

Presented by Robert A. Minor
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, Ohio 43215

Mr. Chairman, representatives, on behalf of the Ohio Self-Insurers' Association,¹ I appreciate the opportunity to address the Committee as a proponent of House Bill No. 498. In addition to speaking to the reasons why this important piece of legislation should pass, I would respond to certain assertions or suggestions that I understand have been made by opponents of the legislation.

In 1913, this legislative body ended decades of litigation arising from workplace accidents and created a comprehensive, no-fault insurance system called workers' compensation. No longer would an employee or his family have to demonstrate employer fault in order to recover for a work related injury. No longer would an employer be able to argue that the employee's own negligence created his injury and, thus, barred a family's recovery. Irrespective of any degree of employee fault, the system created by your predecessors was a comprehensive program which now provides, among other things: 100 percent paid medical benefits; swift, certain and fair compensation to replace economic loss; lifetime benefits for those removed from the workplace; and lifetime benefits for surviving spouses. In addition, exceptionally faulty

¹ The Ohio Self-Insurers' Association ("OSIA") was founded in 1974 to represent Ohio's self-insuring employers in workers' compensation issues. There are over 700 self-insured employers in the State of Ohio and the OSIA presently has over 400 members. Ohio self-insured employers represent one-third of the Ohio work force and over 40 percent of the Ohio payroll. Through educational programs and participation in the legislative process, the OSIA continues to address significant issues affecting the workers' compensation system.

conduct on behalf of the employer may give rise to liability for additional, penalty compensation for a violation of a known safety standard promulgated either by the Bureau of Workers' Compensation or the General Assembly. In return for this no-fault system, employers were granted by both the people of Ohio and the General Assembly absolute immunity from lawsuits for injuries occasioned in the course of employment.

In 1982, this balance was upset by the Supreme Court's decision in Blankenship v. Cincinnati Milacron Chemicals, Inc., in which the Court held that an employee could bring a direct lawsuit against his employer if the employer committed an "intentional tort." The idea that an intentional tort was not a workplace accident that would be compensated under workers' compensation was not out of line with a few other jurisdictions. However, the Supreme Court's examples of conduct that might give rise to a finding of an intentional tort and the Court's holding that there may be a double or triple recovery have made Ohio a maverick among the states and have encouraged lawsuits. No sensible person would argue that a true intentional tort -- that is, where a person acts with the deliberate intent to harm someone -- should be protected by the exclusivity of the workers' compensation remedy. However, what gives rise to double or triple liability in Ohio is conduct that is far less culpable than what is contemplated by a true intentional tort.

Professor Arthur Larson authored the definitive treatise on workers' compensation law. It contains thousands of pages and is the most comprehensive survey of the law of the workshop. It is a neutral reference, an academic work. Here is what Professor Larson wrote about intentional torts:

Since the legal justification for the common law [intentional tort] action is the nonaccidental character of the injury from

the defendant employer's standpoint, the common law liability of the employer cannot, under the almost unanimous rule, be stretched to include accidental injuries caused by the gross, wanton, willful, deliberate, intentional, reckless, culpable, or malicious negligence, breach of statute, or other misconduct of the employer short of a conscious and deliberate intent directed to the purpose of inflicting an injury.

Professor Larson then produced about 60 pages of text describing and digesting the cases from the various states holding that the only exception to the workers' compensation remedy is where there is a conscious, deliberate intent to harm; such conduct takes the act away from the character of being an "accidental" workplace injury.

Professor Larson then discussed the situation in Ohio. He described the holding of the Blankenship case and wrote that the Ohio courts, having opened the door, proceeded to "expand Blankenship in every conceivable direction, as if driven by some passionate determination" to destroy the Exclusivity Rule. He noted that in the early days, all that was needed to be done was to "utter the magic words 'intentional tortious act'" to get around the exclusivity of the workers' compensation remedy. Professor Larson observed that the Ohio Supreme Court held that an employee could recover both workers' compensation benefits for an injury sustained in the course of employment and then file an intentional tort lawsuit claiming that his injury arose outside of the employment relationship. Professor Larson noted the situation that gave rise to the General Assembly's first attempt to control the situation:

As if double recovery were not enough, the Ohio Supreme Court set some kind of compensation law record by finding a way to produce triple recovery.

This decision, together with a number of other Ohio and federal decisions consistently rejecting the exclusiveness defense made some kind of legislative rescue imperative.

As you know, that "legislative rescue" was the 1986 amendment which created a special statutory scheme for remedying intentional torts in the workplace.

Professor Larson continued then:

In 1991, the Supreme Court of Ohio, in one of the most astonishing decisions in the history of compensation law, held the 1986 amendment unconstitutional in toto.

In Am. Sub. H.B. No. 107 the General Assembly attempted again to delineate the conduct that would give rise to a claim of intentional tort. It was stricken by the Supreme Court in State, ex rel. AFL-CIO, v. Voinovich, when the Court held that the legislation violated the single subject rule. The Court did not hold the language of the bill to be constitutionally infirm -- it never reached the merits of the General Assembly's work.

Effective November 1, 1995, the General Assembly again enacted a statute setting forth what must be shown in order for an injured worker to succeed in an employment intentional tort lawsuit. The statutory definition of an intentional tort read as follows:

Sec. 2745.01(D)(1) "Employment Intentional Tort" means an act committed by an employer in which the employer deliberately and intentionally injures, causes an occupational disease of, or causes the death of an employee.

The statute was declared unconstitutional in its entirety by the Ohio Supreme Court in Johnson v. BP Chemicals, Inc. (1999), (85 Ohio St. 3d 298). The

Court essentially held that the definition was so strict as to effectively do away with employment intentional torts.

Before you now is H.B. No. 498, again addressing employment intentional tort. The definition of an intentional tort is the definition from the 1986 legislation. It was a part of legislation crafted by Representative Skeen and Senator Finan, with the encouragement of Speaker Riffe. The definition has not been reviewed by the Supreme Court. The proposed definition reads:

Sec. 2745.01. (A) In an action brought against an employer by an employee, or by the dependent survivors of a deceased employee, for damages resulting from an intentional tort committed by the employer during the course of employment, the employer shall not be liable unless the plaintiff proves that the employer committed the tortious act with the intent to injure another or with the belief that the injury was substantially certain to occur.

(B) As used in this section, "substantially certain" means that an employer acts with deliberate intent to cause an employee to suffer an injury, a disease, a condition, or death.

(C) Deliberate removal by an employer of an equipment safety guard or deliberate misrepresentation of a toxic or hazardous substance creates a rebuttable presumption that the removal or misrepresentation was committed with intent to injure another if an injury or an occupational disease or condition occurs as a direct result.

The first definition of an employment intentional tort was set forth by the Supreme Court in *Jones v. VIP Development* and it was taken from the Restatement of Torts. The Restatement is the reference work on personal injury and contains, among other things, the definition of an intentional tort that is used in virtually every other state. The Restatement is essentially a legal textbook for judges and lawyers. The example of

an intentional tort given in the Restatement is along the following lines: Person A attempts to harm Person B by shooting him with a pistol. Person B is standing in a crowd. Person A shoots but misses Person B and hits Person C, who is in the crowd. Person A has committed an intentional tort. He has done an act with the intent to injure someone where harm was substantially certain to occur, even though he missed his intended target. In the definition of intentional tort in the pending legislation, there must be a showing that there was an intent to harm an employee. What is critical, and what would distance this statute from the other statute, is that harm must be intended to be done to "an" employee, not "the" employee. In this way, the statute is a mirror of the Restatement of Torts' definition.

One of the arguments that I understand has been made against the bill is that its definition is said to be too strict. However, it is the definition of an intentional tort that has been adopted by virtually every American jurisdiction. A suggestion had also been made that recovery is difficult now. The frequency with which these lawsuits are filed might suggest, however, that recovery is not difficult enough. Be that as it may, a recovery in a case outside the workers' compensation system should be difficult, because workers' compensation was designed by the General Assembly to be a comprehensive no-fault, insurance system that takes care of those who are injured in industrial accidents, irrespective of fault. It should be the rare case that is outside of the system and this proposed and fair definition accomplishes that. There is another reason why the definition should be strict: to prevent people from reaping a windfall occasioned by settlements that are less than the cost of defending even meritless claims.

One of the fact situations underlying the three cases that were decided under the title Jones v. VIP Development Company was this: two employees were injured when they moved a conduit and the boom of their lift came into contact with a high voltage power line. What was the employer's claimed intentional tort in that case? The employer was charged with having failed to have warned the operator about putting a metal boom into contact with high tension lines. The Supreme Court held that those facts could be construed by a jury to constitute an "intentional tort" and reversed a judgment that had been entered in favor of the employer. What that tells lawyers who are representing people who are hurt in industrial accidents is that there may be an opportunity to get past a motion for summary judgment and have a jury decide whether a person should double or triple recover where it can be shown that an employer knew or should have known of a hazard. That is a far cry from intentional tort. A lawyer, who is acting "zealously" (as he must under the Code of Professional Responsibility) on behalf of his client, is forced to bring intentional tort action under such circumstances or risk being accused of not fairly representing his client. A tighter definition of intentional tort would discourage such lawsuits from being brought.

Under our Constitution, it is a legislative prerogative to decide what conduct will, or will not, give rise to civil liability. That is a part of the essence of the legislature's role. Throughout the Revised Code this body has described what conduct is actionable and has prescribed what must be shown to prove that conduct. This exercise of legislative power in no way offends the principles of American constitutionalism. Indeed, it is one of the very reasons for the existence of the legislative branch.

The legislature is being asked to pass House Bill No. 498 and restore Ohio's law so that our system for remedying both accidents and intentional torts in the workplace has the balance enjoyed by other states. The self-insuring employers of Ohio are not asking you to create a system which, when compared with other states, could be called anti-employee, anti-safety, or even anti-lawyer. The OSIA only asks that Ohio employers be put on the same footing with employers in other states -- namely, that workers' compensation will be the exclusive remedy for all workplace accidents. Where there is an intent to harm, there is no "accident" and the workers' compensation system should not shield a person who engages in such conduct. Now, however, unlike other states, Ohio employers are subjected to second guessing by lawyers who can argue the employer knew or should have known that harm was likely to occur and failed to take appropriate steps. That maverick rule places Ohio employers at a competitive disadvantage. We ask that you level the playing field by passing H.B. No. 498.

Thank you.

Injured worker: DAVID M. GROSS
 Service: Correspondence

Claim #:03-447821
 DOI: 11/26/2003

#BWNFVSQ
 #IW42033379223881#

12/08/2003
 Date Mailed

DAVID M GROSS
 640 WILTSHIRE BLVD
 KETTERING OH 45419-2731

Injured worker: DAVID M GROSS
 Claim number: 03-447821 Employer's name: FOOD FOLKS & FUN INC
 Injury date: 11/26/2003 Policy number: 1288907-0
 Claim type: Accident Manual number: 9083

An application for workers' compensation benefits was filed 12/03/2003 on behalf of the injured worker, requesting the allowance of this claim for the following injury description:

Oil splashing water "spewed" out of the pressure fryer resulting in second degree burns to the injured worker's right abdominal wall (flank), right back, right buttock, right thigh and first degree burn right forearm.

The claim is ALLOWED for the following medical condition(s):

Code	Description	Body Location	Part of Body
42.23	2ND DEG BURN ABDOMN WALL	RIGHT	
42.24	2ND DEG BURN BACK	RIGHT	
45.26	2ND DEG BURN THIGH	RIGHT	
42.24	2ND DEG BURN BACK	RIGHT	
43.11	1ST DEG BURN FOREARM	RIGHT	

This decision is based on:
 The 11-26-2003 Emergency Room report of Miami Valley Hospital.

Medical benefits will be paid in accordance with the Ohio Bureau of Workers' Compensation (BWC) rules and guidelines. The injured worker is encouraged to forward the information above to all health care providers involved in this claim.

WC grants temporary total disability (TT) payments from 11/27/2003. Payments will continue based on medical evidence.

The injured worker may be eligible for rehabilitation services, which may help him or her return to work more quickly and safely. Please contact either BWC or your managed care organization for more information regarding rehabilitation services.

The full weekly wage for this claim is set at \$ 233.37. The first 12 weeks of temporary total compensation is payable at the rate of \$ 14.67. This rate is 72 percent of the full weekly wage or is the

<https://www.ohiobwc.com/includes/printfriendly.asp>

1/3/2007

Maximum or minimum allowable amount based on the statewide average weekly wage in effect on the date of injury.

WC may reconsider the Full or Average Weekly Wage based upon

1

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