

In the  
**Supreme Court of Ohio**

STATE OF OHIO, ex rel.	:	Case No. 06-1451
JENNIE DOMICO,	:	
	:	
Appellant,	:	On Appeal from the
	:	Franklin County
	:	Court of Appeals,
v.	:	Tenth Appellate District
	:	Court of Appeals Case
INDUSTRIAL COMMISSION, et al.,	:	No. 05AP-805
	:	
Appellee.	:	
	:	

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**INDUSTRIAL COMMISSION'S MEMORANDUM IN OPPOSITION TO  
APPELLANT'S MOTION FOR RECONSIDERATION**

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ROBERT E. TABLACK\* (0009249)

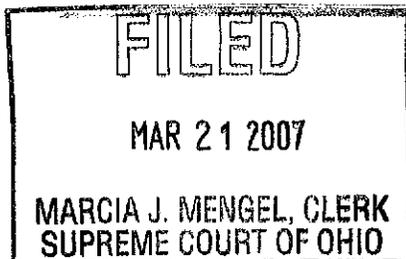
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## MEMORANDUM IN OPPOSITION

In her motion for reconsideration Appellant provides no new arguments. This case has already been thoroughly briefed. Appellant is simply unhappy with the outcome. As previously briefed, Decedent/Claimant, Anthony Domico (“Mr. Domico”) passed away prior to adjudication by the commission and his claim abated by operation of law. This has been well settled law for nearly eighty years. See, *State ex rel. Hamlin v. Indus. Comm.* (1993), 68 Ohio St.3d 21; *Bozzelli v. Indus. Comm.* (1930), 122 Ohio St. 201; *State ex rel. Petroff v. Indus. Comm.* (1933), 127 Ohio St. 65; and *State ex rel. Nicholson v. Copperweld Steel Co.* (1996), 77 Ohio St.3d 193.

Mrs. Domico’s subsequent death claim for the same alleged occupational disease was denied on its merits by a Mahoning county jury under R.C. 4123.512. Accordingly, no accrued compensation exists. As previously briefed, *State ex rel. Nicholson v. Copperweld Steel Co.* (1996), 77 Ohio St.3d 193 certainly does stand for the proposition that a widow can pursue accrued benefits which had not been paid to the claimant. However, in this case no compensation had accrued. Decedent’s claim abated upon his death and Appellant’s claim for the same alleged condition was denied on its merits by a jury of her peers. Appellant failed to prove that any compensation had accrued, and *Nicholson*, supra, does not mandate payment of non-existent accrued compensation.

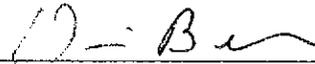
Lastly, as previously briefed, *State ex rel. Bowie v. Indus. Comm.*, 75 Ohio St.3d 458, has no bearing on this matter. This issue was not raised administratively and is therefore waived. Further, the stipulated record reveals the commission relied on numerous competent medical reports. Further, in a de novo appeal, a jury determined that decedent had not died as a result of a work related occupational disease. There is no basis for workers’ compensation in this matter.

## CONCLUSION

For all of the foregoing reasons, the commission submits that its decision denying payment of alleged accrued compensation was not an abuse of discretion. Therefore, the motion for reconsideration should be denied.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing memorandum by the Industrial Commission of Ohio was served by U.S. mail, postage prepaid, this 21st day of March, 2007, upon the following counsel:

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