

ORIGINAL

In the
Supreme Court of Ohio

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| STATE OF OHIO, ex rel. | : | CASE NO. 2010-0211 |
| JAMEY D. BAKER, | : | |
| | : | |
| Relator-Appellant, | : | On Appeal from the |
| | : | Franklin County |
| vs. | : | Court of Appeals, |
| | : | Tenth Appellate District |
| COAST TO COAST MANPOWER LLC, | : | |
| | : | Court of Appeals |
| Respondent-Appellee, | : | Case No. 09AP-0287 |
| | : | |
| and | : | |
| INDUSTRIAL COMMISSION OF OHIO, | : | |
| | : | |
| Respondent-Appellant. | : | |

MOTION TO CONSOLIDATE OF APPELLANTS

THEODORE A. BOWMAN (009159)
Gallon, Takacs, Boissoneault &
Schaffer Co., L.P.A.
3516 Granite Circle
Toledo, Ohio 43617
419-843-2001
419-843-6665 fax

Counsel for Appellant,
Jamey D. Baker

MICK L. PROXMIRE (0074032)
Reminger Co. L.P.A.
65 East State Street, 4th Floor
Columbus, Ohio 43215
614-232-2627
614-232-2410 fax

Counsel for Appellee,
Coast to Coast Manpower LLC

RICHARD CORDRAY
Ohio Attorney General

COLLEEN C. ERDMAN (0080765)
Assistant Attorney General
Workers' Compensation Section
150 East Gay Street, 22nd Floor
Columbus, Ohio 43215
614-466-6696
614-752-2538 fax
colleen.erdman@ohioattorneygeneral.gov

Counsel for Appellant,
Industrial Commission of Ohio

FILED
SEP 24 2010
CLERK OF COURT
SUPREME COURT OF OHIO

Appellants, Industrial Commission of Ohio (“commission”), and Jamey D. Baker (“Baker”), move this Court to consolidate this case with *State ex rel. Dolgencorp, Inc. v. Indus. Comm. and Joanne Simpson*, Supreme Court Case No. 2010-0124, on appeal from the Franklin County Court of Appeals, Tenth District Case No. 08AP-1014, filed on January 21, 2010. Both cases involve R.C. 4123.57 and whether, under the facts of each case, the statute permits a scheduled loss award. For the reasons stated in the attached memorandum in support, the appellants ask this Court to consolidate the two cases. Joanne Simpson (“Simpson”), appellant-claimant in Case No. 2010-0124, joins in this request.

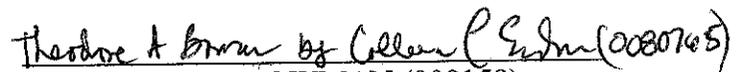
Respectfully submitted,

RICHARD CORDRAY
Ohio Attorney General



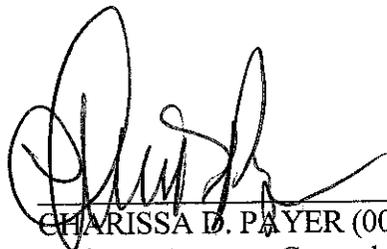
COLLEEN C. ERDMAN (0080765)
Assistant Attorney General
150 East Gay Street, 22nd Floor
Columbus, Ohio 43215
614-466-6696
614-752-2538 fax
colleen.erdman@ohioattorneygeneral.gov

Counsel for Appellant,
Industrial Commission of Ohio
in Case No. 10-211



THEODORE A. BOWMAN (009159)
Gallon, Takacs, Boissoneault &
Schaffer Co., L.P.A.
3516 Granite Circle
Toledo, Ohio 43617
419-843-2001
419-843-6665 fax

Counsel for Appellant,
Jamey D. Baker
in Case No. 10-211



CHARISSA D. PAYER (0064452)

Assistant Attorney General
150 East Gay Street, 22nd Floor
Columbus, Ohio 43215
614-466-6696
614-728-9535 fax
charissa.payer@ohioattorneygeneral.gov

Counsel for Appellant,
Industrial Commission of Ohio
in Case No. 10-124

Ross R. Fulton by Colleen C. Egan (0080765)

ROSS R. FULTON (0082852)

PHILIP J. FULTON (0008722)

Philip J. Fulton Law Office
89 East Nationwide Boulevard, Suite 300
Columbus, Ohio 43215
614-224-3838
614-224-3933 fax
ross@fultonlaw.com
phil@fultonlaw.com

Counsel for Appellant,
Joanne Simpson
in Case No. 10-124

MEMORANDUM IN SUPPORT

INTRODUCTION

Simpson and Baker both sustained eye injuries in the course and scope of their employment. After her injury and initial treatment, Simpson underwent a corneal transplant, which involved the removal of her natural cornea. Similarly, after his injury and initial surgical repair to his eye, Baker lost his natural lens when he was fitted with an intraocular lens implant. Both claimants moved the Bureau of Workers' Compensation for a scheduled loss award under R.C. 4123.57(B) due to the total loss of vision each sustained when their natural tissue was removed. Because both cases have similar facts and involve an interpretation of the same statute, it would be in the interest of judicial economy that the cases be consolidated.

STATEMENT OF THE FACTS AND CASES

Simpson injured her left eye when she accidentally splashed bleach into it while working for Appellee, Dolgencorp, Inc. ("Dolgencorp"). Her workers' compensation claim is allowed for the conditions of interstitial keratitis left eye, corneal opacity, and corneal neovascularization of the left eye. After her initial treatment, Simpson was still plagued with constant tearing, glare phenomena, loss of depth perception, and corneal opacity. She eventually underwent a corneal transplant.

Similarly, Baker injured his right eye while working for Appellee, Coast to Coast Manpower, LLC ("Manpower"). His workers' compensation claim is allowed for right corneal foreign body, right laceration of eye, and right traumatic cataract. Baker developed the cataract as a result of the initial surgical repair to his eye. To treat the traumatic cataract, his natural lens was removed and replaced with an intraocular lens implant.

Both claimants administratively moved for scheduled loss awards under R.C. 4123.57(B), which permits an award for the loss of sight. In Simpson's case, a staff hearing officer found that Simpson suffered a total loss of her left eye due to the removal of her cornea. Dolgencorp filed suit in mandamus, and the appellate court issued a writ of mandamus based on an improper total loss of sight award.

The commission denied Baker's request for a scheduled loss award, prompting him to file a mandamus action. While that action was pending, the commission further reviewed the matter and reversed its position. The commission submitted a supplemental brief to the appellate court requesting that it issue a writ because it determined that Baker suffered a total right eye vision loss when his natural lens was removed. The appellate court relied on its earlier decision in *State ex rel. Dolgencorp* to find that the commission had not abused its discretion in denying Baker's motion for a scheduled loss award. Simpson, Baker, and the commission all filed appeals to this Court.

ARGUMENT

Consolidation is appropriate for multiple reasons. Primarily, combining the matters will conserve judicial resources. Moreover, it would provide the lower court and commission with a single decision addressing vision loss due to both a corneal transplant and a lens implant.

Additionally, the cases share common issues. Both matters involve an interpretation of the same statute, and address the question of whether a total loss of vision has occurred where a claimant loses his or her natural tissue following a work injury. Both claimants are the appellants, along with the commission, and the same attorney represents both employers. If the Court chooses to have oral argument in these matters, consolidation would add only one

additional counsel for a second injured worker. In addition, consolidation would not be prejudicial to any party.

CONCLUSION

The appellants request a consolidation of Supreme Court Case Nos. 2010-0124 and 2010-0211 because of the commonality of the parties and issues, and because it would be in the interest of judicial economy.

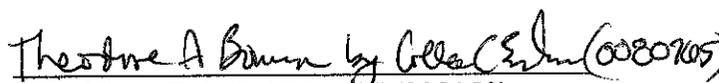
Respectfully submitted,

RICHARD CORDRAY
Ohio Attorney General



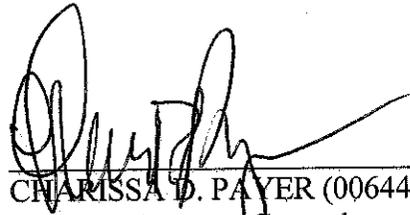
COLLEEN C. ERDMAN (0080765)
Assistant Attorney General
150 East Gay Street, 22nd Floor
Columbus, Ohio 43215
614-466-6696
614-752-2538 fax
colleen.erdman@ohioattorneygeneral.gov

Counsel for Appellant,
Industrial Commission of Ohio
in Case No. 10-211



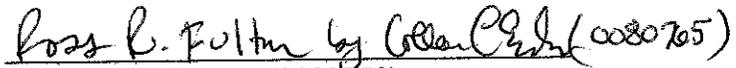
THEODORE A. BOWMAN (009159)
Gallon, Takacs, Boissoneault &
Schaffer Co., L.P.A.
3516 Granite Circle
Toledo, Ohio 43617
419-843-2001
419-843-6665 fax

Counsel for Appellant,
Jamey D. Baker
in Case No. 10-211



CHARISSA D. PAYER (0064452)
Assistant Attorney General
150 East Gay Street, 22nd Floor
Columbus, Ohio 43215
614-466-6696
614-728-9535 fax
charissa.payer@ohioattorneygeneral.gov

Counsel for Appellant,
Industrial Commission of Ohio
in Case No. 10-124



ROSS R. FULTON (0082852)
PHILIP J. FULTON (0008722)
Philip J. Fulton Law Office
89 East Nationwide Boulevard, Suite 300
Columbus, Ohio 43215
614-224-3838
614-224-3933 fax
ross@fultonlaw.com
phil@fultonlaw.com

Counsel for Appellant,
Joanne Simpson
in Case No. 10-124

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing *Motion to Consolidate of Appellants*, was sent to the following by regular U.S. Mail, postage prepaid, this 24th day of September,

2010:

Theodore A. Bowman
GALLON, TAKACS, BOISSONEAULT & SCHAFFER CO., L.P.A.
3516 Granite Circle
Toledo, Ohio 43617

Counsel for Relator-Appellant,
Jamey D. Baker
in Case No. 10-211

Mick Proxmire
REMINGER CO. L.P.A.
65 East State Street, 4th Floor
Columbus, Ohio 43215

Counsel for Respondent-Appellee,
Coast to Coast Manpower LLC
in Case No. 10-211
and
Counsel for Relator-Appellee
Dolgencorp, Inc. (aka Dollar General)
in Case No. 10-124

Ross Fulton
PHILIP J. FULTON LAW OFFICE
89 East Nationwide Boulevard, Suite 300
Columbus, Ohio 43215

Counsel for Respondent-Appellant,
Joanne R. Simpson
in Case No. 10-124



COLLEEN C. ERDMAN
Assistant Attorney General