IN THE SUPREME COURT OF OHIO

ORIGINAL

SHAUN ARMSTRONG,	:	Case No. 2012-0244
	:	
Plaintiff-Appellant,	:	
	:	
v.	:	(On Appeal from the
	:	Clark County Court of Appeals
JOHN R. JURGENSON, et al.	:	Second Appellate District
	:	Case No. 2011-CA-6)
Defendants-Appellees	:	

REPLY BRIEF OF APPELLANT, SHAUN ARMSTRONG

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I. This Court has defined R.C. 4123.01(C) as covering psychological conditions which arise contemporaneous to physical injuries. As such, Appellee's request that the Court reinterpret the statue to preclude those conditions must be rejected.

This Court has issued a long line of decisions which have resulted in a clear rule regarding the application of R.C. 4123.01(C) to psychological conditions. That rule is simple, where an injury results in the contemporaneous development of physical and psychological conditions, psychological conditions can be recognized as part of a claim ; where the injury suffered by an injured worker does not result in a physical condition, psychological conditions will not be allowed in a claim. *McCrone v. Bank One Corp.* (2005), 107 Ohio St.3d 272, *Bunger v. Lawson Co.* (1998), 82 Ohio St.3d 463, *Rambaldo v. Accurate Die Casting* (1992), 65 Ohio St.3d 281, *State ex rel. Clark v. Indus. Comm.* (2001), 92 Ohio St.3d 455, 459, *Andolsek v. Kirtland* (11th Dist. 1994), 99 Ohio App.3d 333, 335; *Connors v. Sterling Milk Co.* (3rd Dist. 1993), 98 Ohio App.3d 711; *Grant v. Ohio Department of Liquor Control*, (1st Dist. 1993), 86 Ohio App.3d 76, 83.

Appellee offers an argument in this case which clearly deviates from this long held position of this Court on the compensability of psychological conditions. As Appellant's brief explained in depth, this Court has held that psychological conditions which arise contemporaneous to physical conditions are compensable in the workers' compensation setting. *Id.* Aware of the problem that this caselaw presents in regard to its argument, Appellee has asked the Court to reinterpret the statute without paying any heed to the definitional clarity that the caselaw addressing this statute provides. Such an argument is clearly preposterous. As is essential to its role, this Court must rely on the history of cases which have discussed how a statute is to be interpreted, to help it determine the appropriate application of the statute in this case. In the case at bar, the result of such an examination can only lead to the conclusion that the definition

presented in R.C. 4123.01(C) provides for the recognition of psychological conditions which arise contemporaneous to physical injuries.

Appellee may not like the interpretation that the Court has provided in regard to R.C. 4123.01(C), but it has been the prevailing wisdom of this Court in a long line of cases – of which *McCrone v. Bank One Corp.* is the most explicit – that psychological conditions which arise contemporaneous to physical injuries are compensable. *McCrone*, 107 Ohio St.3d 272. This interpretation is explained by the Court in a manner which totally complies with the language of the statute itself. Despite this fact, Appellant has asked the Court to ignore its previous decisions in favor of a new interpretation that would narrow the rule regarding psychological allowances in a manner which would now bar psychological allowances which have never previously been precluded from the workers compensation system. Simply stated, the Court has previously ruled that R.C. 4123.01(C) aims to include psychological conditions in circumstances where physical and psychological conditions arise at the same time from the same event. *Id.* Appellee's argument is nothing more than a bold faced request that this Court go back on that interpretation.

The argument offered by Appellee strays quite a distance from the existing caselaw. Specifically, Appellee is requesting that the Court narrow its long held interpretation R.C. 4123.01 to bar more psychological conditions than the Court's previous decisions would preclude. Throughout its argument, Appellee pretends that its beef is with the position stated by the Appellant. In truth, the point of contention is not with the Appellant at all. The problem that Appellee repeatedly points to is a problem that Appellee has with the previous opinions of this Court, opinions which clearly dictate that the conditions in this case should be considered compensable. As per the line of cases which this Court has produced on this topic, because an injury includes an event from which physical conditions arise, that injury can also be used to

justify the recognition of psychological conditions which arose contemporaneously from the same event. *McCrone*, 107 Ohio St.3d 272, *Bunger*, 82 Ohio St.3d 463, *Rambaldo*, *Clark*, 92 Ohio St.3d at 459, *Andolsek*, 99 Ohio App.3d at 335; *Connors*, 98 Ohio App.3d 711; *Grant*, 86 Ohio App.3d 76. Appellee's narrower position would bar such psychological conditions even though the causal event is unquestionably the same for the physical and psychological conditions. Unfortunately for the Appellee, the Court has repeatedly indicated that Appellee's narrow definition is not what the legislature intended when structuring R.C. 4123.01. As the Court has explained, R.C. 4123.01(C)(1), aims to preclude psychological conditions in circumstances where the events leading to those conditions cannot be tied in any way to physical injuries (this is based largely on the difficult nature of determining causality in psychological cases). *Id.* Where the event causing the physical and psychological conditions is the same, however, the problems associated with exclusively psychological conditions are averted, and, as such, contemporaneous psychological conditions are compensable. *Id.* The logic is that simple.

The Court's interpretation has led to a clear rule on the compensability of psychological injuries. Psychological conditions which arise from the same injury, i.e. injury causing event, as physical injuries, are compensable. *McCrone*, 107 Ohio St.3d 272, *Bunger*, 82 Ohio St.3d 463, *Rambaldo*, *Clark*, 92 Ohio St.3d at 459, *Andolsek*, 99 Ohio App.3d at 335; *Connors*, 98 Ohio App.3d 711; *Grant*, 86 Ohio App.3d 76. Psychological conditions which arise in the absence of physical injuries are not compensable. *Id.* It is important to make clear that this Court has never stated that a psychological condition should be barred under R.C. 4123.01(C) for any reason other than the ABSENCE OF PHYSICAL INJURIES. *Id.* The differentiating factor has been clearly defined as the existence of physical injuries. *Id.* To reiterate, psychological conditions which arise from an injurious event which also leads to physical conditions are compensable;

psychological conditions which arise from events which do not cause physical injuries are not compensable.

Under R.C. 4123.01(C), when an individual suffers an injury, both physical and psychological conditions that arise during the suffering of that injury are compensable. In the case at bar, Shaun Armstrong was injured when the truck he was driving was struck from behind by an oncoming vehicle. It is without dispute that this injurious event caused him to suffer both physical and psychological conditions. This Court has indicated that when physical and psychological conditions arise contemporaneously from the same event, the psychological conditions are compensable. This is precisely the circumstance which arises in this case. As such, the decisions of the trial court and the appellate court in this case must be vacated, and a decision must be issued which is consistent with the long held standard that psychological conditions which arise contemporaneous to physical injures are compensable.

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Certificate of Service

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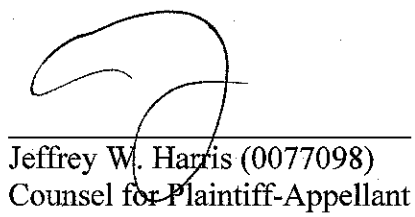

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