

## IN THE SUPREME COURT OF OHIO

Shaun Armstrong, :  
 Appellant, : Case No. 2012-0244  
 : On Appeal from the  
 vs. : Clark County Court of Appeals  
 : Second Appellate District  
 John R. Jurgensen Co., et al., : Case No. 2011-CA-6  
 Appellees. :

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**MEMORANDUM OF APPELLEE JOHN R. JURGENSEN CO.  
 OPPOSING APPELLANT'S REQUEST FOR RECONSIDERATION**

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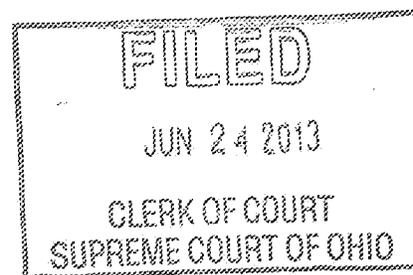
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## MEMORANDUM IN OPPOSITION

### **I. Introduction**

Under the guise of a Request for Reconsideration, Appellant Shaun Armstrong asks this Court to revisit its straightforward interpretation of R.C. 4123.01(C)'s definition of a compensable "injury." Armstrong is now not only contesting the trial and appellate courts' application of the statutory definition of a covered injury, but also the similar analysis and decision set forth by this Court. Put simply, the allegations raised in Armstrong's Request for Reconsideration are inaccurate and nothing more than attempt to reargue the very issues that were presented to this Court on appeal. Specifically, Armstrong alleges that the Court engaged in judicial activism by substituting what he believes to be a limiting definition of "condition" in place of the broader term "injury." A simple reading of the Court's opinion reveals that it did no such thing. As explained below, Armstrong's assertions lack merit and constitute a re-argument of the issues previously presented to the Court. Despite Armstrong's assertion, the decision by this Court is a proper ruling based upon the straightforward application of the definition of "injury," as set forth in R.C. 4123.01(C), consistent with legislative history and existing case law.

### **II. Argument**

**The Court's decision in *Armstrong v. John R. Jurgensen Co.* constitutes a straightforward application of the definition of "injury" as set forth in the amended version of R.C. 4123.01(C).**

- A. **The Court did not engage in judicial activism, but rather issued a decision that is consistent with not only the plain language of R.C. 4123.01(C), but also legislative intent and existing case law.**
- B. **The Court properly analyzed the statutory definition of the term “injury” in accordance with the plain language of the statute, legislative history and existing case law.**

Contrary to Armstrong’s assertions, the Court’s decision, which confirms that “for a mental condition to be compensable, a compensable physical injury sustained by the claimant must cause the mental condition[,]” did not change an established principle in workers’ compensation law. *Armstrong v. John R. Jurgensen Co.*, 2013-Ohio-2237, ¶1. The alleged principle Armstrong is referring to—that a psychological condition is compensable if it arises contemporaneous with a physical injury--was the thrust of his argument previously presented to the Court and dismissed as invalid. This Court specifically stated that the cases upon which Armstrong relied in support of his theory were “not only distinguishable, but also silent on the specific question now before this court.” *Armstrong* at ¶24.

Conversely, this Court noted that “[c]onsistent with the plain language of R.C. 4123.01(C)(1), several Ohio courts of appeals have recognized that mental conditions are compensable under the workers’ compensation system only when a physical injury causes them.” *Armstrong* at ¶25 citing *Dunn v. Mayfield*, 66 Ohio App.3d 336, 584 N.E.2d 37 (4<sup>th</sup> Dist. 1990); *Neil v. Mayfield*, 2<sup>nd</sup> Dist. No. 10881, 1988 WL 76179, \*1 (July 22, 1988); *Lengel v. Griswold*, 8<sup>th</sup> Dist. No. 53054, 1987 WL 20459 (Nov. 25, 1987); *Karavolos v. Brown Derby, Inc.*, 99 Ohio App.3d 548, 552, 651 N.E.2d 435 (11<sup>th</sup> Dist.1994); and *Jones v. Catholic Healthcare Partners, Inc.*, 7<sup>th</sup> Dist. No. 11 MA 23, 2012-Ohio-6269, ¶31. Consequently, Armstrong’s argument that the Court’s decision overturned an established principle is simply a reargument of the theories previously presented on appeal and must fail. *See State v. Hood*, 135 Ohio St.3d 137, 2012-Ohio-6208, quoting *State ex rel. Huebner v. W. Jefferson Village Council*,

75 Ohio St.3d 381, 383, 662 N.E.2d 339 (1995) (This Court has sparingly invoked reconsideration “to correct decisions which, upon reflection, are deemed to have been made in error”) and S.Ct.Prac.R. 11.2(B) (a motion for reconsideration “shall not constitute a reargument of the case”).

**C. The Court’s decision does not improperly substitute the vague term “condition” in place of the statutorily defined term “injury.”**

Armstrong’s suggestion that the Court failed to distinguish the statutorily defined term “injury” from a physical “condition” caused by an injurious event is not only inaccurate, but also another attempt to assert his previously argued theory that to be compensable, a mental condition need only arise contemporaneously with a physical injury from the same injurious event. (Request for Recon. p. 4), *Armstrong* at ¶15 (“Armstrong and OAJ urge this court to adopt a reading of the term “injury” that embraces the entire episode or accident giving rise to a claimant’s physical injuries”). Contrary to Armstrong’s assertions, this Court’s holding and analysis hinge on the definition of “injury” as set forth in R.C. 4123.01(C) and Ohio case law. As noted above, this Court determined that:

for a mental condition to be compensable under the Ohio workers’ compensation system, a compensable *physical injury* sustained by the claimant must cause the mental condition.

(Emphasis added) *Armstrong* at ¶1. See also *Armstrong* at ¶18 and ¶25 (explaining that to be compensable psychiatric condition must be causally related to the claimant’s compensable physical *injury*). The Court did not speak in terms of an undefined “condition” as Armstrong maintains. Rather, the Court engaged in a detailed analysis of the statutorily defined term “injury” and applied it accordingly, consistent with the plain wording of the statute, legislative intent, and existing case law:

Armstrong and OAJ urge this court to adopt a reading of the term “injury” that embraces the entire episode or accident giving rise to a claimant’s physical

injuries. We decline to do so. R.C. 4123.01(C), in its entirety, sets forth a comprehensive definition of “injury” for purposes of workers’ compensation. We must read the term “injury” in the R.C. 4123.01(C)(1) exception as consistent with the general definition in R.C. 4123.01(C), which focuses on the resulting harm, not on the cause or means underlying the harm.

R.C. 4123.01(C) requires that an injury be “received in the course of, and arising out of, the injured employee’s employment.” The phrase “in the course of” relates to the time, place, and circumstances of an injury, and “arising out of” contemplates a causal connection between the injury and the employment. *Fisher v. Mayfield*, 49 Ohio St.3d 275, 277-278, 551 N.E.2d 1271 (1990). The “injury,” however, is distinct from those considerations. While the cause and underlying circumstances are relevant to the question of compensability, once the prerequisites to coverage are met, it is the resultant harm that constitutes the “injury” received or sustained by the claimant, and it is from that harm that the claimant’s psychiatric condition must arise.

Beyond requiring physical injury or occupational disease, R.C. 4123.01(C)(1) also defines the required nexus between the physical injury or occupational disease and a corresponding mental condition. As relevant here, to be compensable, the mental condition must have “arisen from an injury \* \* \* sustained by th[e] claimant.” (Emphasis added.) R.C. 4123.01(C)(1). “Arisen from,” as used in R.C. 4123.01(C)(1), contemplates a causal connection between the mental condition and the claimant’s compensable physical injury. “Arise” means “to originate from a specified source[;] to come into being[;] to become operative.” *Webster’s Third New International Dictionary* 117 (1986). “From” is “a function word to indicate a starting point: \* \* \* [or] to indicate the source or original or moving force of something as \* \* \* the source, cause, means, or ultimate agent of an action or condition.” *Id.* at 913. Based on the language of R.C. 4123.01(C)(1), the court of appeals held that “[t]o be compensable, a psychiatric condition must have been started by and therefore result from a physical injury or occupational disease the claimant suffered.” *Armstrong*, 2d Dist. No. 2011-CA-6, 2011 Ohio 6708, at ¶ 35. We agree, reading these terms together in context, that the statute requires a causal connection between a claimant’s physical injury and the claimant’s mental condition.

The phrase “arisen from” in R.C. 4123.01(C)(1) parallels the language in R.C. 4123.01(C), which states that “injury” includes any injury “received in the course of, and *arising out of*, the injured employee’s employment.” (Emphasis added.) “[A]rising out of” contemplates a causal connection between the injury and the employment. *Fisher* at 277-278. *Armstrong* would have us construe the analogous language in R.C. 4123.01(C)(1) as devoid of a similar causative element, thus setting a broad standard requiring only temporal proximity. We discern no basis for distinction and will not overlook the well-established construction of the phrase “arising out of” as relating to causation. The plain language of R.C. 4123.01(C) and (C)(1) requires that to constitute a compensable

injury for purposes of workers' compensation, a psychiatric condition must be causally related to the claimant's compensable physical injury. Accordingly, the statute must be applied as written.

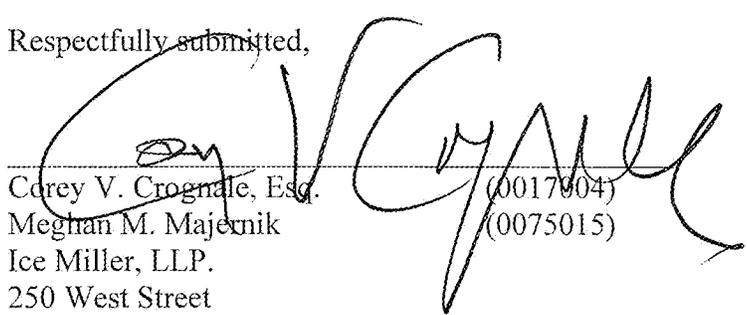
*Armstrong* at ¶15-18.

Based upon the above analysis, it is clear that this Court did not commit error and substitute the undefined term "condition" in place of the statutorily defined term "injury" as suggested by *Armstrong*. (Request for Recon. p. 4). The above excerpt from the decision also reveals that this Court has directly addressed *Armstrong's* "injurious event" theory. Accordingly, *Armstrong's* allegations, which constitute nothing more than an attempt to reargue the issues raised on appeal, lack merit and must be rejected. See S.Ct.Prac.R.(B) and *Hood*, 135 Ohio St.3d at 138 and *Huebner*, 75 Ohio St.3d at 383.

### **III. Conclusion**

The allegations raised by *Armstrong* in his Request for Reconsideration are inaccurate and nothing more than attempt to reargue the very issues that were presented to the Court on appeal. For the foregoing reasons, Appellee John R. Jurgensen Co. respectfully submits there is no basis for this Court to reconsider its Decision, and therefore urges the Court to deny *Armstrong's* Request for Reconsideration.

Respectfully submitted,

  
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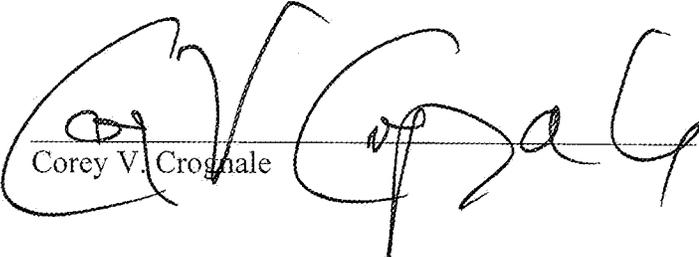
**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been mailed by regular U.S. mail, postage prepaid, on this 24 day of June, 2013, to the following:

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