

[Cite as *In re Fazio*, 2004-Ohio-6172.]

**IN THE COURT OF CLAIMS OF OHIO**  
**VICTIMS OF CRIME DIVISION**

IN RE: MICHAEL B. FAZIO	:	Case No. V2004-60512
MICHAEL B. FAZIO	:	<u>ORDER OF A THREE-</u>
Applicant	:	<u>COMMISSIONER PANEL</u>
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{¶ 1} The applicant filed a reparations application seeking reimbursement of incurred expenses in relation to a May 25, 2001 DUI related motor vehicle incident. On July 15, 2003, the applicant filed a supplemental compensation application seeking additional reimbursement. On March 12, 2004, the Attorney General granted the applicant an additional award of reparations in the amount of \$1,475.08 after an In re Fout-Craig, V93-27851tc (2-5-99) economic loss apportionment analysis of 67/33 percent. On March 17, 2004, the applicant filed a request for reconsideration. On May 7, 2004, the Attorney General issued a Final Decision indicating that the previous decision warranted no modification. On May 19, 2004, the applicant filed a notice of appeal to the Attorney General's Final Decision. Hence, this matter came to be heard before this panel of three commissioners on August 4, 2004 at 11:10 A.M.

{¶ 2} The applicant, applicant's counsel, and an Assistant Attorney General attended the hearing and presented testimony and oral argument for the panel's consideration. Michael Fazio testified that he was vacationing in Mexico when he was struck by a motor vehicle. Mr. Fazio stated that he sustained a brain injury, a fractured skull, severed nerves which affected his sense of taste and smell, a broken femur, and some hearing loss to his left ear as a result of the

incident. The applicant explained that he was flown from Mexico to Arizona and then from Arizona to Ohio for treatment. The applicant indicated that he remained hospitalized for a couple of months and that he eventually underwent speech therapy and minor physical therapy. Mr. Fazio testified that he still experiences ringing in his left ear (even after surgery), severe leg pain, and memory loss. The applicant asserted that this incident has also significantly impacted his mental functioning. Mr. Fazio explained that he is unable to engage in abstract thinking or perform simple math calculations mentally (as he once was accustomed to doing). The applicant stated, based upon his cognitive limitations, that he is now relegated to making life changing adjustments in order to cope with his decreased mental capacity.

{¶ 3} Mr. Fazio also testified that prior to the criminally injurious conduct, he was employed as a research technician for Owens Corning. Mr. Fazio acknowledged that even though he returned to work two months after the incident as a research technician and was promoted, he is still unable to fully function on his previous mental level. The applicant asserted that due to his decreased mental ability, he believes he has reached a promotional ceiling within his field of expertise.

{¶ 4} Gladys Fazio, the applicant's sister, testified that after hearing the news of her brother's injury, she flew to Arizona and stayed with him during his entire recovery period. Ms. Fazio stated that her brother was in a coma and on life-support when she arrived in Arizona and despite his release from the hospital, therapy sessions and return to work, he is not the same person he was before the accident. Ms. Fazio explained that she had the opportunity to observe the applicant undergo a variety of changes after the incident, which included weight loss, diminished mental functioning, depreciated concentration and focus, decreased hearing loss to

his left ear, loss of taste and smell, chronic leg pain, reduced physical activity, and social isolation.

{¶ 5} Applicant's counsel stated that this claim, based upon the testimony presented, demands a higher economic loss reapportionment analysis. Counsel recommended a 90/10 percent economic split to be a reasonable apportionment figure in light of the circumstances surrounding this case. Counsel urged the panel to consider in their determination all the injuries the applicant sustained as a result of the criminally injurious conduct, the current effects of those injuries upon the applicant as well as the future impact of those injuries upon the applicant.

{¶ 6} The Assistant Attorney General continued to maintain that a 67/33 percent economic loss apportionment figure is reasonable, in light of the applicant's mild memory loss, his successful return to employment within two months of the incident, his promotion, and Dr. Denise Rabold's February 13, 2002 neuropsychological assessment, as well as the applicant's collateral sources.

{¶ 7} From review of the file and with full and careful consideration given to all the information presented at the hearing, this panel makes the following determination. As a result of the criminally injurious conduct, the applicant sustained a fractured skull, a traumatic brain injury, a fractured femur, severed nerves that resulted in sensory loss of taste, smell and diminished hearing loss for the applicant. We find that the testimony presented indicates that the May 25, 2001 incident has greatly impacted Mr. Fazio's life and that he continues to suffer extremely serious effects from the injury, which includes chronic leg pain, decreased hearing and ringing in his left ear, reduced concentration and cognitive thinking, emotional distress, limited social interaction, and the inability to perform various physical activities. Based on the above

information, this panel finds that 75 percent is a reasonable percentage to be attributable to non economic loss considering the degree of the

{¶ 8} applicant's injuries and the effects that the injuries have had and shall continue to have on the applicant. Therefore, the May 7, 2004 decision of the Attorney General shall be affirmed as to the \$1,475.08 award, but reversed as to the 67/33 percent economic loss apportionment analysis.

{¶ 9} IT IS THEREFORE ORDERED THAT

{¶ 10} 1) The May 7, 2004 decision of the Attorney General is AFFIRMED as to the \$1,475.08 award, but REVERSED as to the 67/33 percent economic loss apportionment analysis;

{¶ 11} "2) This claim is referred to the Attorney General for payment of the award;

{¶ 12} 3) This claim is remanded to the Attorney General for economic loss calculations and decision consistent with the panel's findings;

{¶ 13} 4) This order is entered without prejudice to the applicant's right to file a supplemental compensation application, within five years of this order, pursuant to R.C. 2743.68;

{¶ 14} 5) Costs are assumed by the court of claims victims of crime fund.

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THOMAS H. BAINBRIDGE  
Commissioner

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CLARK B. WEAVER, SR.  
Commissioner

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KARL H. SCHNEIDER  
Commissioner

ID #\1-dld-tad-4816

A copy of the foregoing was personally served upon the Attorney General and sent by regular mail to Licking County Prosecuting Attorney and to:

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To S.C. Reporter 11-19-2004