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**Sent:** Wed 6/5/2013 4:51 PM

### **Gallagher Sharp Shop Talk: Workers' Compensation**

On June 4, 2013, the Supreme Court of Ohio issued an opinion, *Armstrong v. John R. Jurgensen Co.*, Slip Opinion No. 2013-Ohio-2237, holding that R.C. 4123.01(C)(1) limits workers compensation coverage for psychiatric conditions to conditions which are caused by a compensable physical injury. This 5-2 decision, which clarifies prior law concerning contemporaneous physical injury, is an important victory for the BWC and Ohio employers.

*Armstrong* involved a claimant who filed a claim for injuries arising from a 2009 automobile accident. The claimant claimed to have suffered both physical injuries and post-traumatic stress disorder ("PTSD") as a result of the crash, in which another was driver was killed. The BWC approved the claim for cervical, thoracic, and lumbar sprains, but denied the claim for PTSD, alleging that it was unrelated to the claimant's physical injuries. The claim proceeded to hearing in the Industrial Commission of Ohio, at which an SHO additionally allowed the claim for PTSD, finding it was causally related to his injury and the allowed physical conditions. The employer appealed to the common pleas court pursuant to R.C. 4123.512, and after a bench trial at which expert evidence was presented by both sides, the trial court held that the PTSD was not compensable because it did not arise from the physical injuries. The claimant appealed to the Second District Court of Appeals, which affirmed, prompting an appeal as of right to the Supreme Court.

The Court affirmed, citing R.C. 4123.01(C), which specifically excludes psychological injuries except when the condition has "arisen from an injury or occupational disease sustained by the claimant." Rejecting arguments by the claimant (and Ohio Association for Justice) that it adopt a broad reading of "arisen" to include an entire episode, the Court found the language of the statute unambiguous. While the parties stipulated that the claimant had PTSD, that the PTSD arose from the claimant's observations at the accident, and that the claimant also sustained contemporaneous physical injuries as a result of the accident, the Court found that there was "contradictory" evidence as to whether the physical injuries contributed to the PTSD. The Court construed "arisen" to contemplate a causal relationship between the physical and mental injuries, and because there was competent, credible evidence to support the trial court's conclusion that the PTSD did not arise from the physical injuries, the Supreme Court affirmed. The Court also distinguished *McCrone v. Bank One Corp*, 107 Ohio St.3d 272, which never addressed the relationship between physical and mental injuries because the plaintiff in that case did not suffer a physical injury. In a spirited dissent, Justice Pfeiffer (joined by new Justice O'Neill) argued that the claimant in *Armstrong* should be compensated, stating that the terms "arisen from" and "caused by" are different. The dissent also made the point that, had the PTSD arisen from the state of the claimant's body instead of observations at the accident scene, the condition would be compensable – an absurd result.

I think that even some long-time practitioners may be surprised by the Court's reasoning in *Armstrong*. "Contemporaneous physical injury" has long been a catch-phrase for mental conditions in the years since *McCrone* was decided, but the "arisen from" language has never

been clearly and definitively interpreted by the Court. If you would like to submit a question to Shop Talk, or would like to discuss this or any other workers' compensation issues, you can contact me.

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