

**THE STATE EX REL. UNDERWOOD, APPELLANT, v. INDUSTRIAL COMMISSION OF
OHIO, APPELLEE.**

[Cite as *State ex rel. Underwood v. Indus. Comm.*, 2001-Ohio-1338.]

Workers' compensation—Court of appeals' judgment affirmed.

(No. 01-266—Submitted July 17, 2001—Decided September 26, 2001.)

APPEAL from the Court of Appeals for Franklin County, No. 00AP-412.

{¶ 1} The judgment of the court of appeals is affirmed consistent with the opinion of the court of appeals.

MOYER, C.J., PFEIFER, COOK and LUNDBERG STRATTON, JJ., concur.

DOUGLAS, RESNICK and F.E. SWEENEY, JJ., dissent.

ALICE ROBIE RESNICK, J., dissenting.

{¶ 2} I would reverse the judgment of the court of appeals and return the cause to the Industrial Commission for relief consistent with *State ex rel. Gay v. Mihm* (1994), 68 Ohio St.3d 315, 626 N.E.2d 666.

DOUGLAS and F.E. SWEENEY, JJ., concur in the foregoing dissenting opinion.

Stewart Jaffy & Associates Co., L.P.A., Stewart R. Jaffy and Marc J. Jaffy; Boyd, Rummell, Carach & Kmetz Co., L.P.A., and Randall W. Rummell, for appellant.

Betty D. Montgomery, Attorney General, and Erica L. Armbrust, Assistant Attorney General, for appellee.

Philip J. Fulton & Associates, Philip J. Fulton and Jonathan H. Goodman, for amicus curiae, Ohio Academy of Trial Lawyers in support of appellant.

Stewart Jaffy & Associates Co., L.P.A., Stewart R. Jaffy and Marc J. Jaffy,
for *amicus curiae*, Ohio AFL-CIO in support of appellant.
