

[Cite as *Johnson v. Cleveland Coca Cola Bottling Co.*, 2005-Ohio-396.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 84489

KATHLEEN JOHNSON, ET AL.	:	
	:	JOURNAL ENTRY
Plaintiffs-Appellees	:	
	:	AND
vs.	:	
	:	OPINION
CLEVELAND COCA COLA	:	
BOTTLING CO., INC.	:	
	:	
Defendant-Appellant	:	
	:	
	:	
DATE OF ANNOUNCEMENT	:	
OF DECISION	:	<u>FEBRUARY 3, 2005</u>
	:	
CHARACTER OF PROCEEDINGS	:	Civil appeal from
	:	Common Pleas Court
	:	Case No. CV-432678
	:	
JUDGMENT	:	AFFIRMED.
	:	
DATE OF JOURNALIZATION	:	

APPEARANCES:

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FRANK D. CELEBREZZE, JR., J.:

{¶ 1} The Cleveland Coca-Cola Bottling Company ("Cleveland Coke") appeals from a jury verdict, which found that Kathleen Johnson was entitled to participate in the Worker's Compensation Fund due to the death of her husband, Riley Johnson, who was employed by Cleveland Coke. After reviewing the record and the arguments of the parties, we affirm the jury's verdict and rulings made by the trial court.

{¶ 2} Riley Johnson was employed by Cleveland Coke as a maintenance mechanic and was responsible for the morning start-up of Cleveland Coke's production equipment at the bottling plant located in Bedford Heights, Ohio. Riley was responsible for preparing, servicing, and assisting with machinery and equipment in Cleveland Coke's production department, including the ammonia refrigeration system.

{¶ 3} In the production of soft drinks, water must be mixed with syrup and then cooled to a temperature between 33 and 36

degrees Fahrenheit in order to bottle the product; this cooling process prevents "foam" from accruing in the bottles. The cooling process is accomplished through the use of an ammonia refrigeration system that is designed to run automatically. The system cools by converting liquid ammonia into a gas, which is then cycled through the system and eventually returned to a liquid form at the compressors.

{¶ 4} On the morning of September 8, 1998, Riley Johnson was notified by Stanley Kopchian, a filler operator, that the temperature of the syrup and water mixture was not dropping to the required levels to commence bottling. Riley went to the compressor room where he manually started the refrigeration system. An over-pressurization of the system occurred, which caused a high-pitched alarm to sound and warning lights to activate. The over-pressurization of the system also caused a safety valve located on the building's roof to open and release ammonia gas. Following this release, the refrigeration system began to cycle and operate normally. Riley went to the roof to ensure that the safety valve had properly closed and reset itself, then waited for the fire department to arrive. It was only the second time in twenty years that such an over-pressurization of ammonia gas had occurred at a Coke facility.

{¶ 5} Later that day, Riley reported to his supervisor that he was experiencing neck pain and a severe headache. Riley was taken

to Meridia South Point Hospital where he was treated for chemical inhalation of ammonia. He rested at home for two days, but on September 10th, he was still not feeling well, so his wife took him to the Brunswick Family Practice. Upon examination, Dr. Miller ordered a CT scan, which showed "abnormalities" in Riley's brain. On September 16th, Riley was taken to MetroHealth Medical Center where Dr. Yoshiro Takaoka diagnosed him as suffering from a rupture of a basilar tip aneurysm. The aneurysm was determined to be congenital.

{¶ 6} On September 18, 1998, Riley underwent surgery in an attempt to "clip" the bleeding aneurysm. He suffered two major strokes during the procedure and never regained consciousness. Following the surgery, he was transferred to a nursing home where he remained in a vegetative state until his death on March 28, 1999. Riley was forty-three years old.

{¶ 7} Kathleen Johnson, as the surviving spouse of Riley Johnson, and also as the fiduciary of his estate, filed an application for medical benefits and compensation, including death benefits, with the Bureau of Workers' Compensation. Kathleen claimed her husband's death resulted from work place stress that caused a physical injury. Her application was contested by Cleveland Coke, a self-insured employer under the program. On January 3, 2001, the Industrial Commission of Ohio, following two administrative hearings, denied Kathleen's claim. The Commission

found that Riley Johnson's death was not causally related to his employment with Cleveland Coke.

{¶ 8} On January 31, 2001, a staff hearing officer refused Kathleen's appeal of the Commission's January 3rd decision. On March 14, 2001, Kathleen appealed the decision of the Industrial Commission to the trial court, pursuant to R.C. 4123.512. On March 10, 2004, a jury trial commenced, which resulted in a verdict finding that Kathleen was entitled to participate in the Worker's Compensation Fund for the death of her husband, Riley.

{¶ 9} Specifically, the jury found by a preponderance of the evidence, using special interrogatories, that (1) the events of September 8, 1998 at Cleveland Coke caused Riley Johnson unusual mental and emotional stress; which (2) resulted in the rupture of a pre-existing cerebral aneurysm that was caused by a greater emotional strain or tension than all workers are occasionally subjected to in the work place; and (3) that Riley's death was accelerated by a substantial period of time as a direct and proximate result of the unusual mental or emotional stress suffered on September 8, 1998 at Cleveland Coke.

{¶ 10} Cleveland Coke (hereinafter the "appellant") appeals from the jury's verdict in favor of Kathleen Johnson alleging five assignments of error.<sup>1</sup> The appellant's first, third, fourth, and

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<sup>1</sup>Appellant's five assignments of error are included in Appendix A of this Opinion.

fifth assignments of error will be addressed together since they all relate to the admission or exclusion of evidence.

### **Admission and Exclusion of Evidence**

{¶ 11} The admission or exclusion of evidence is generally within the sound discretion of the trial court. *Peters v. Ohio State Lottery Comm.* (1992), 63 Ohio St.3d 296, 299, 587 N.E.2d 290. A trial court's determination of the admissibility of relevant evidence cannot be disturbed unless the trial court abuses its discretion and, consequently, the party affected by the abuse suffers material prejudice. *Krischbaum v. Dillon* (1991), 58 Ohio St.3d 58, 66, 567 N.E.2d 1291. To constitute an abuse of discretion, the ruling must be more than legal error; it must be unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217. "The term discretion itself involves the idea of choice, of an exercise of the will, of a determination made between competing considerations." *State v. Jenkins* (1984), 15 Ohio St.3d 164, 222, quoting *Spalding v. Spalding* (1959), 355 Mich. 382, 384-385. In order to have an abuse of that choice, the result must be so palpably and grossly violative of fact or logic that it evidences not the exercise of will but the perversity of will, not the exercise of judgment but the defiance of judgment, not the exercise of reason but instead passion or bias. *Nakoff v. Fairview General Hospital* (1996), 75 Ohio St.3d 254.

{¶ 12} A physical injury occasioned solely by mental or emotional stress, received in the course of, and arising out of, an injured employee's employment is compensable under R.C. 4123.01(C). *Ryan v. Connor* (1986), 28 Ohio St.3d 406, 503 N.E.2d 1379. In contrast, an "injury or disability caused primarily by the natural deterioration of tissue, an organ, or part of the body" is not a compensable workers' compensation injury. R.C. 4123.01(C)(2). In order to establish entitlement to worker's compensation benefits for a stress-related injury, an injured worker must first show that the stress he or she was subjected to "resulted from greater emotional strain or tension than that to which all workers are occasionally subjected." *Id.* at 409 (emphasis added). Because stress is experienced by every person in everyday life, in order for a stress-related injury to be compensable, it must be the result of mental or emotional stress that is, in some respect, "unusual." *Id.* "In objectively considering whether work-related stress is compensable, it is necessary to view the stress experienced by the injured employee in comparison to the stress encountered by every member of the work force," rather than simply considering the claimant/decedent's individual response to the stress. *Sommer v. Conrad* (1999), 134 Ohio App.3d 291; *Howell v. Euclid & Wickliffe Serv.* (1994), 99 Ohio App.3d 680, 651 N.E.2d 1018; *Waddington v. Levison* (1994), 98 Ohio App.3d 754, 649 N.E.2d 884; *Pence v.*

*McSwain Carpets, Inc.* (1993), 87 Ohio App.3d 793, 623 N.E.2d 201; *Small v. Defiance Public Library* (1993), 85 Ohio App.3d 583, 587, 620 N.E.2d 879. The court must analyze the stress experienced under an objective standard. *Ibid.*

{¶ 13} Second, the injured worker must establish a causal connection between the work place stress he/she experienced and the resulting injury; i.e., the claimant must prove by a preponderance of the evidence that his/her work place stress was the medical cause of his/her injury. *Ryan*, 28 Ohio St.3d at 409-410. In the alternative, where death benefits are sought, the claimant must show by a preponderance of the evidence that the decedent's death was "accelerated by a substantial period of time as a direct and proximate result of the \*\*\* stress." *Ryan*, *supra*, quoting *McKee v. Electric Auto-Lite Co.* (1958), 168 Ohio St. 77, 151 N.E.2d 540, at the syllabus. This second prong focuses on the claimant/decedent's subjective response to the stress. *Small*, 85 Ohio App.3d 583, at 587.

{¶ 14} Like any other issue of medical causation, this requires expert medical testimony to establish that the work-related stress caused the injury within a reasonable degree of medical probability. Proof by a reasonable degree of medical probability means that the condition more likely than not caused the injury. *Cooper v. Sisters of Charity* (1971 ), 27 Ohio St.2d 242, 272 N.E.2d 97; see, also, *Wells v. Miami Valley Hosp., Inc.* (1993), 90



Ohio App.3d 840, at 853-854, 631 N.E.2d 642. In general, the casual relationship poses a factual question and is best left to medical experts and the trier of fact to decide; the analysis must proceed on a case-by-case basis. *Ryan*, 28 Ohio St.3d at 410, 503 N.E.2d at 1382.

{¶ 15} A witness may testify as an expert if he/she, among other things, "is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony; [and] the witness' testimony is based on reliable scientific, technical, or other specialized information."

Evid.R. 702(B), (C). In its first argument, the appellant claims the trial court erred by allowing the expert medical testimony of Dr. Howard Tucker. Appellant argues that Dr. Tucker was not a qualified expert on work place stress and utilized an improper subjective test instead of an objective test when rendering his expert opinion. Appellant further contends that Dr. Tucker assumed facts not in evidence to arrive at his conclusions.

{¶ 16} At trial, the videotaped deposition of Dr. Howard Tucker was presented by the appellee in order to prove the medical causation between the stress Riley Johnson experienced on September 8, 1998 and the aneurysm that ruptured and caused his death. Dr. Tucker is a licensed medical doctor, board certified in neurology, the study of the human nervous system; Tucker specializes in treating the brain and spinal cord. He has been a

doctor since 1947, and his qualifications in neurology are quite impressive and extensive.

{¶ 17} In order to render an expert opinion, Dr. Tucker reviewed Riley's Meridia South Point Hospital emergency room record from the day of the incident, his records from the Brunswick Family Practice prepared by Dr. Miller, Cleveland Coke's incident report from September 8th, and the CT scan report from Medina General Hospital.

{¶ 18} After reviewing various reports, Dr. Tucker opined, with a reasonable degree of medical certainty, that Riley's aneurism ruptured on September 8, 1998 because of both the emotional and physical stress brought on by the incident involving the ammonia refrigeration system's over-pressurization and release of gas. Dr. Tucker stated that Riley suffered a severe headache that started abruptly after the over-pressurization incident, which is a symptom of an aneurism rupturing. Dr. Tucker went on to explain that Riley had never encountered this type of stressful situation before, which involved not only emotions, but also physical stress to attend to this pressure valve.

{¶ 19} Dr. Tucker stated that the stress experienced by Riley on September 8th did not cause or create the aneurysm, it was always there; the situation only caused the aneurysm to bleed. Dr. Tucker explained that a person can have an aneurysm from birth and live his entire life without it rupturing. Moreover, Dr.

Tucker stated that an aneurysm very rarely ruptures when someone is at rest; fifty percent of the time, an aneurysm like Riley's ruptures when the person is under stress and physical exertion.

{¶ 20} Dr. Tucker went on to explain how the human body deals with a stressful situation: increased blood pressure; increased heart rate; and a decreased pressure in spinal fluid, which reduces the pressure pushing back against a bulging artery, i.e. an aneurysm, and could cause the bulging artery to burst. Lastly, Dr. Tucker opined that the possibility of Riley's aneurysm rupturing in the weeks before September 8th was extremely remote.

{¶ 21} First, the appellant contends that the trial court allowed Dr. Tucker to testify about work place stress when he was not qualified as an expert on the subject. Dr. Tucker admitted he has not done any original research on work place stress, nor reviewed studies about occupational stress in the soft drink bottling industry. However, despite the appellant's contentions, we find that his expert testimony related specifically to medical causation and not to the fact of whether the stressful event that Riley experienced was unusual or greater than work place stress to which all workers are occasionally subjected.

{¶ 22} The appellant further claims that Dr. Tucker erred in arriving at his expert opinion by subjectively analyzing how Riley Johnson interpreted the over-pressurization release of ammonia on September 8th. After reviewing Dr. Tucker's testimony, we find

that his opinion about how Riley Johnson perceived the stress of the situation to be proper.

{¶ 23} The first prong of the *Ryan* test requires the trial court -- or if evidence is in dispute, the trier of fact -- to analyze the work place stress from an objective standpoint; i.e., the stress as it relates to *all workers*. However, Ohio courts have consistently held that *Ryan's* second prong, regarding the medical causation between the work place stress and the injury, be viewed through the claimant/decedent's subjective standpoint. See *Small v. Defiance Public Library* (1993), 85 Ohio App.3d 583, 587, 620 N.E.2d 879. "[T]he factual issue of causal relationship is generally for the medical experts and the triers of fact." *Ryan*, 28 Ohio St.3d at 410, quoting *Village v. General Motors Corp.* (1984), 15 Ohio St.3d 129, 136. Although Dr. Tucker stated at one point that the stress Riley experienced on September 8th was extreme and out of the usual course of one's experience with stress -- "a remarkable stress" -- he later recanted stating that the comment he made was his opinion "as a person who had lived a long time" and not as a stress expert.

{¶ 24} Lastly, the appellant argues that Dr. Tucker relied on evidence not in the record to arrive at his expert opinion, and his testimony should be excluded. Specifically, the appellant claims that Dr. Tucker stated that Riley Johnson heard a "blast or explosion" when the safety valve on the roof opened, and that he

relied on this sound factor in forming his expert opinion. The record reflects that Dr. Tucker obtained this information from Riley's medical records.

{¶ 25} Dr. Tucker conceded during his deposition that the "blast or explosion" he referred to could also be considered "a release," lacking a dramatic sound. However, even when conceding this point, Dr. Tucker testified that the difference would not change the outcome of his expert opinion. Furthermore, Stanley Kopchian, a filler operator at the Coke facility on the day of the accident, testified that a truck driver told him he had heard a loud "pop" at the time of the ammonia release, corroborating Riley's claim of a loud sound.

{¶ 26} After reviewing Dr. Tucker's expert testimony, we cannot hold that the trial court abused its discretion in allowing the testimony of Dr. Tucker to be presented to the jury. The appellant's first assignment of error is overruled.

{¶ 27} In its third argument, the appellant claims the trial court erred by not allowing it to present evidence to the jury that the appellee had solicited and obtained private insurance payments from her insurer, Medical Mutual, and represented that Riley's injuries were not work related. Specifically, the appellant sought to introduce Medical Mutual claim forms on which a box had been checked "no" to indicate that Riley's injuries were not related to his employment. The appellant contends that the

introduction of this evidence would show the jury that the appellee's testimony was inconsistent.

{¶ 28} Evidence Rule 403(A) provides that relevant evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, or confusion of the issues, or of misleading the jury.

{¶ 29} After reviewing the record, we find that the probative value of the claim forms was substantially outweighed by the danger of unfair prejudice to the plaintiff. First, the Medical Mutual claim forms were filed immediately after Riley's injury and before the appellee filed a claim for worker's compensation. At that point in time, the appellee may not have realized that her husband's injury was work related.

{¶ 30} Second, if the medical documents were admitted, they would go more towards the determination of the medical causation of Riley's injury and not as a sign of Kathleen Johnson's inconsistent testimony; the second prong of *Ryan* requires that a medical expert prove causation. Finally, the appellant failed to authenticate the Medical Mutual documents, rendering them hearsay.

The record reflects that the appellant did not produce a medical expert to contradict Dr. Tucker's testimony and cannot rely on a hearsay document to do so.

{¶ 31} Given the reasons stated above, we find that the trial court properly excluded prejudicial evidence. The appellant's third assignment of error is overruled.

{¶ 32} In its fourth argument, the appellant claims that the trial court erred by refusing to allow it to introduce evidence that the appellee had initiated a separate civil suit in which she attributed Riley's death to an intentional employer tort and the subsequent medical malpractice of his treating physicians. The appellant claims it sought the introduction of this evidence to show both that the appellee had been inconsistent with the theory of her husband's death and as an admission by the appellee that her husband's injuries were not work related.

{¶ 33} The record indicates that the appellee filed a separate civil suit<sup>2</sup> against the appellant, claiming it committed an intentional tort against Riley. The appellee also sued Riley's treating physicians, claiming they committed medical malpractice.

The appellee voluntarily dismissed the intentional tort action against the appellant before the start of trial. Thereafter, a jury returned a verdict in favor of Riley's treating physicians on appellee's medical malpractice claim.

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<sup>2</sup> A civil action was filed in the Cuyahoga County Common Pleas Court, captioned *Kathy Johnson, Individually and as Administratrix of the Estate of Riley Johnson v. Cleveland Coca-Cola Bottling Company, Inc., et al.*, Case No. CV 99390927.

{¶ 34} The appellant contends that both causation and the appellee's credibility were at issue in this case and cite to *Selwyn v. McCord* (Nov. 18, 1993), Cuyahoga App. No. 64066, for the proposition that this evidence should have been allowed in by the trial court.

{¶ 35} *Selwyn* involved a plaintiff who had claimed permanent disability after being involved in three different motor vehicle accidents that occurred within a one-month period. Liability was admitted by all three defendants; the only issue left to determine was the amount of damages. At the damages hearing, defense counsel was permitted to question the plaintiff about previous civil lawsuits in which he had made similar claims of permanent disabilities occurring after various car accidents. The trial court held that the credibility of the plaintiff's injuries were at issue and the relevance of the testimony was not outweighed by its potential prejudice.

{¶ 36} The instant matter is distinguishable from *Selwyn*. The appellee in this case only seeks benefits for the loss of her husband and does not have a litigious history. The record reflects that the appellee voluntarily dismissed the intentional tort action against the appellant before trial commenced. When filing a complaint, a plaintiff must advance all possible theories of causation. Ohio law recognizes that there may be more than one proximate cause for a work-related injury. See *Kennedy v. Toledo*



(1991), 75 Ohio App.3d 12, 598 N.E.2d 839. Moreover, any subsequently occurring medical malpractice resulting from Riley's treatment and care would not change the fact that Riley's injuries could have been work related; Dr. Tucker testified that an existing aneurysm could rupture due to stress.

{¶ 37} Moreover, this evidence, as stated before, tends to rebut medical causation, not show inconsistent testimony, and is highly prejudicial to the plaintiff, especially since the appellant did not produce its own medical expert.

{¶ 38} After reviewing the record, we find the trial court did not abuse its discretion in refusing to allow evidence of the appellee's prior lawsuit against the appellant and Riley's treating physicians. The probative value of this evidence was substantially outweighed by the danger of unfair prejudice. The appellant's fourth assignment of error is overruled.

{¶ 39} In its fifth argument, the appellant claims the trial court abused its discretion in refusing to allow it to introduce the deposition testimony of Dr. Yoshiro Takaoka, the physician who performed Riley's surgery, claiming he was unavailable by rule. The appellant claims it wanted to introduce the deposition testimony of Dr. Takaoka to rebut Dr. Tucker's expert testimony relating to medical causation. We find Dr. Takaoka's deposition was properly excluded by the trial court.

{¶ 40} The appellant sought to introduce the deposition testimony of Dr. Takaoka, which was taken during the appellee's medical malpractice action. During the deposition, Dr. Takaoka was asked whether he could pinpoint the specific cause of the rupture of Riley's aneurysm; Takaoka stated that he could not, stating an aneurysm could rupture due to many factors. When asked if the aneurysm could have ruptured because of the ammonia Riley inhaled, Takaoka stated it was possible. It is undisputed that the appellant did not participate in the deposition of Dr. Takaoka because it had been dismissed from the suit.

{¶ 41} We find that Dr. Takaoka could not have been properly qualified as an expert given his deposition testimony alone. In his deposition, Takaoka was defending a medical malpractice action filed against him. Dr. Takaoka did not offer an expert medical opinion as to the cause of Riley's injury. He was not concerned with how the aneurysm ruptured, but rather with how the condition was treated. Dr. Takaoka was not asked to opine about the work place events of September 8, 1998, nor was his opinion given with a reasonable degree of medical probability. Furthermore, we have no way to determine what information Dr. Takaoka's statements were based upon. To allow Dr. Takaoka's deposition testimony from a previous lawsuit would confuse the jury and violate Ohio Evidence Rules 702, 703, 704, 705.

{¶ 42} The appellant's fifth assignment of error is therefore overruled.

#### **Directed Verdict**

{¶ 43} In its second assignment of error, the appellant argues that the trial court should have granted it a directed verdict after the close of the plaintiff's case, claiming the plaintiff failed to prove that the work place stress experienced by Riley resulted from a greater emotional strain or tension than that to which all workers are occasionally subjected. The appellant claims the plaintiff did not compare the decedent's stress to that of other workers, nor did she produce a qualified stress expert to testify.

{¶ 44} A motion for a directed verdict should be granted when construing the evidence most strongly in favor of the party opposing the motion, the trial court finds that reasonable minds could come to only one conclusion and that conclusion is adverse to such party. Civ.R. 50(A)(4); *Crawford v. Halkovics* (1982), 1 Ohio St.3d 184; *The Limited Stores, Inc. v. Pan American World Airways, Inc.* (1992), 65 Ohio St.3d 66.

{¶ 45} A directed verdict is appropriate where the party opposing it has failed to adduce any evidence on the essential elements of this claim. *Cooper v. Grace Baptist Church* (1992), 81 Ohio App.3d 728, 734. The issue to be determined involves a test of the legal sufficiency of the evidence to allow the case to

proceed to the jury, and it constitutes a question of law, not one of fact. *Hargrove v. Tanner* (1990), 66 Ohio App.3d 693, 695; *Vosgerichian v. Mancini Shah & Associates, et al.* (Feb. 29, 1996), Cuyahoga App. Nos. 68931 and 68943. Accordingly, the courts are testing the legal sufficiency of the evidence rather than its weight or the credibility of the witnesses. *Ruta v. Breckenridge-Remy Co.* (1982), 69 Ohio St.2d 66, 68-69.

{¶ 46} Legal causation must be shown by demonstrating that the injury resulted from greater emotional strain or tension than that to which all workers are occasionally subjected and is viewed through an objective standard. "In objectively considering whether work-related stress is compensable, it is necessary to view the stress experienced by the injured employee in comparison to that stress encountered by every member of the work force." *Small v. Defiance Public Library* (1993), 85 Ohio App.3d 583, 587.

This determination is a factual issue for the jury. *Id.* Upon review of the record before us, we find that there was sufficient evidence for the trier of fact to make this objective determination. The following testimony was introduced at trial:

{¶ 47} Clifford Snyder, who worked at Cleveland Coke for 43 years, testified that there had only been two ammonia over-pressurization incidents in the past twenty years. Brian Bigley, a maintenance manager at Cleveland Coke, testified that it was an unusual event to have an ammonia over-pressurization and release.

He testified that it was Riley's responsibility to address the situation, and that this sort of malfunction was a big deal to a maintenance mechanic. Bigley originally stated in his deposition that Riley looked "struck," like he had taken a 30-minute jog around the building, following the release incident; Bigley changed his testimony at trial. David Smith, a production manager, testified that the ammonia refrigeration system runs automatically and does not require anything to be done to it to run. Evidence was also introduced that Riley had never dealt with an ammonia over-pressurization and release before. Kathleen Johnson testified that Riley told her that "something big" happened at work regarding the ammonia over-pressurization incident.

{¶ 48} Other testimony was introduced showing that when the refrigeration system over-pressurized, a warning light activated and a high pitched alarm sounded. Thereafter, a loud pop sound was heard, and ammonia gas was released from the system through the safety valve on the roof. The fire department arrived, and Riley went to the roof to make sure the safety valve had reset itself. If the refrigeration system had not started, or if the refrigeration system had expelled too much ammonia, the Cleveland Coke facility would have been shut down.

{¶ 49} Managers at Cleveland Coke testified that although there had been only one other ammonia over-pressurization release in the

past twenty years, the event was not unusual. They testified that the ammonia refrigeration machine operated like it was supposed to. With this evidence in dispute, the issue was properly in place before the jury to determine.

{¶ 50} After reviewing the evidence presented in the light most favorable to the plaintiff, we find that there was sufficient evidence presented for the jury to determine that the stress Riley Johnson experienced on the morning of September 8, 1998, at Cleveland Coke, was greater than that experienced by all workers in general, not just the workers at Cleveland Coke. The trier of fact is in the best position to evaluate the first prong of the Ryan test; a stress expert is not needed. Therefore, the appellant's second assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR.  
JUDGE

ANN DYKE, P.J., AND

SEAN C. GALLAGHER, J., CONCUR.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).

#### APPENDIX A

Appellant's five assignments of error:

"I. The trial court abused its discretion in allowing Dr. Howard Tucker to testify on stress and causation where the doctor: (1) had no qualifications as an expert on work place stress; (2) assessed the level of stress according to an improper *subjective* test rather than the *objective* test required by Ohio law; and (3) assumed facts not in evidence."

"II. The trial court erred in failing to direct a verdict where appellee presented no evidence comparing the stress experienced by decedent to that to which all workers are occasionally subjected."

"III. The trial court abused its discretion in refusing to allow Cleveland Coke to introduce evidence that appellee had solicited and obtained insurance payments by representing that decedent's injuries were not work-related."

"IV. The trial court abused its discretion in refusing to allow Cleveland Coke to introduce evidence that appellee had initiated separate civil litigation in which she attributed

decedent's death to an intentional employer tort and medical malpractice."

"V. The trial court abused its discretion in refusing to permit Cleveland Coke to introduce at trial the deposition testimony of Dr. Yoshiro Takaoka, decedent's treating physician, who was unavailable by rule."