

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS  
FORT MYERS DISTRICT OFFICE  
OJCC#09-003610KAS  
DATE OF ACCIDENT: 9/26/2008

JESUS GARZA RODRIGUEZ, )  
CLAIMANT, )  
 )  
V. )  
 )  
ATG HOLDING COMPANY/UNITED )  
STATES FIRE INSURANCE CO. and )  
CRUM AND FORSTER INSURANCE, )  
EMPLOYER/CARRIER/SERVICING AGENT. ) JUDGE: KATHY A.STURGIS

**FINAL COMPENSATION ORDER**

After proper notice to the parties the above captioned workers' compensation case came for final hearing before the undersigned on August 24, 2011, in Fort Myers, Lee County, Florida, on the petition for benefits docketed on July 21, 2010. The Claimant, who is unrepresented, did not appear for the merits hearing, and the Employer/Carrier ("E/C") was represented at the hearing by Jonathan L. Cooley, Esquire. The evidence closed on August 24, 2011 after closing argument.

PRE-TRIAL MOTIONS

The merits hearing on this petition set for January 26, 2011 after the first mediated on November 1, 2010 when Claimant was represented by attorney David Abramovici. Shortly thereafter on November 23, 2010 Mr. Abramovici filed his motion to withdraw as Claimant's attorney which was granted on December 21, 2010. The January merits hearing remained on the calendar pending Claimant's retaining a new attorney, but if he did not have an attorney by that date the January 26, 2011 hearing was to serve as a live pre-trial for the pro se Claimant. Claimant did not appear for that pre-trial and no attorney was retained. After show cause hearings on the non appearance the case was continued to allow Claimant additional time to retain new counsel and for a second mediation. The August 24, 2011 hearing was set and Claimant signed for notice of same June 16, 2011.

The notice was set yet again in June, 2011, but Claimant did not sign for those notices, but the regular mail was not returned. I waited for over 20 minutes on the date of hearing to allow for Claimant to appear. The E/C elected to go forward with the merits hearing and presented evidence regarding the lone claim. Claimant did not appear at all.

#### CLAIMS

The following claims were the subject of this hearing:

1. Authorization of follow-up treatment with Dr. Wolff;
2. Costs and attorney's fees.

#### DEFENSES

The defenses to the above claims were:

1. No further treatment needed/Claimant at MMI per Dr. Wolff's deposition.
2. No entitlement to attorneys fees and costs.

#### EXHIBITS

The exhibits listed on Exhibit A attached hereto were received into evidence without objection.

#### LIVE WITNESS TESTIMONY

There were no witnesses called to testify

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

In making findings of fact and conclusions of law regarding these claims and defenses, I have carefully considered and weighed all the evidence, although I may not specifically reference each piece, and did not give a detailed summary of all the testimony and documentary

evidence. Based upon the stipulations and exhibits and after careful consideration of the arguments of counsel, it is found that:

#### FINDINGS OF FACT

1. I have jurisdiction over the subject matter and parties.
2. Venue is properly in Collier County, Florida, but there currently are no courtrooms available for Workers' Compensation cases in Collier County, so the hearing was waived to Lee County, Florida.
3. I adopt as findings of fact the stipulations of the parties as set forth in the pre-trial stipulation.
4. It is undisputed that Jesus Rodriguez, the Claimant, sustained a compensable injury as the result of an industrial accident arising out of and in the course and scope of work performed in his covered employment with the subject employer on September 26, 2008 when he was sprayed with/exposed to methylbromide. He received authorized care for same, however his need for ongoing care for that injury is disputed.
5. When Claimant saw neurologist Brian Wolff on April 23, 2009 he did not complain of any problems and denied any headaches, dizziness, neck pain, or visual problems, beyond occasional left eye tearing (Ex. 1 P 5-6).
6. Claimant requires no further medical treatment as a result of being sprayed with methylbromide (Ex. 1 P 7 L 1-4).

#### CONCLUSIONS OF LAW

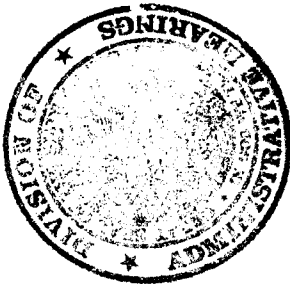
In order to be entitled to continued treatment with the neurologist, Dr. Wolff, Claimant must establish both the causal relationship of the requested medical care to his industrial accident, as well as the reasonable medical necessity for same. The evidence does not support either the causal relationship of the requested treatment, nor the

reasonable medical necessity for same. Claimant did not meet his burden of proof to obtain the requested medical benefits.

**IT IS HEREBY ORDERED AND ADJUDGED THAT**

Claimant is not entitled to the requested follow up appointment with Dr. Brian Wolff, or to attorney's fees and costs from the E/C.

**DONE AND ORDERED** in Fort Myers, Lee County, Florida on the 24 day of August, 2011.



*[Handwritten signature]*  
\_\_\_\_\_

Kathy A. Sturgis  
Judge of Compensation Claims  
4379 Colonial Boulevard Suite 200  
Fort Myers, Florida 33966  
(239) 938-1159

**CERTIFICATE OF ENTRY AND MAILING OF ORDER**

THIS IS TO CERTIFY that the above Order was entered in the Office of the Judge of Compensation Claims and a copy was served by regular and certified mail on the Claimant, and by e-mail on counsel for the Employer/Carrier, at the addresses listed below, on this the 24 day of August, 2011.

*[Handwritten signature]*  
\_\_\_\_\_ Secretary to Judge Sturgis

**COPIES SENT TO:**

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**EXHIBIT A**

- Exhibit #1: Deposition transcript of Brian Wolff, M.D.;
- Exhibit #2: E/C's trial memorandum for purposes of argument only;
- Exhibit #3: 07/21/2010 Petition for Benefits and Response;
- Exhibit #4: 2 Mediation Conference Reports/11/1/2010 & 6/27/2011;
- Exhibit #5: Pretrial Order and Notice of Final Hearing; and
- Exhibit #6: Composite of notices of hearing and Certified mail receipts.