

State ex rel. Moorehead v. Indus. Comm

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State ex rel. Moorehead v. Indus. Comm

- William Moorehead fell approximately 15-20 feet and landed head-first on a concrete floor. He suffered a major spine injuries that rendered him a quadriplegic.
- He was taken to an emergency room, where he died less than two hours after the accident due to massive head trauma and hemorrhaging without regaining consciousness.
- His widow, Sandra Moorehead, filed a death claim under the state workers' compensation program and was granted a death benefit.
- Sandra subsequently filed a second claim seeking benefits under R.C. 4123.57(B)

R.C. 4123.57(B)

- Ohio's workers' compensation law provides for benefits when an employee suffers the loss of a limb, either by amputation or by complete loss of use, as a result of a workplace injury.
 - One arm, IW entitled to 225 weeks of compensation (in 2009, at a rate of \$767 per week for a total award of \$172,575)
 - One leg, IW entitled to 200 weeks of compensation (\$153,400)
 - Loses both, IW entitled to 425 weeks (\$325,975)
 - Compensation is paid at the highest rate for the year of injury, irrespective of the employee's average weekly wage.

R.C. 4123.57(B)

- For a 2009 injury, this would amount to an award of \$651,950 if it is determined the employee lost the use of all four limbs before he or she died.
- And for the claimant, this award would be in addition to the weekly workers' compensation death benefits he or she would receive until his or her death or re-marriage (in the case of a surviving spouse).

R.C. 4123.57(B)

- Historically, the Industrial Commission (IC) interpreted the law as requiring the employee to experience “the physical suffering and hardship caused by the loss of a body part” before the claimant could establish eligibility for benefits based on that loss.
 - the employee had to be **aware** that he or she had lost the use of his or her limb.
- The IC also interpreted the law as requiring “an actual sustained loss of use” so that **the employee had the opportunity to perceive and experience the loss.**
 - Thus, in order for the claimant to be eligible for loss of use benefits, the employee had to survive the injury for an undetermined period of time, but at least long enough to experience the loss of use, and sometime during that period the employee had to become consciously aware of the loss.
 - Ohio courts deferred to the IC’s interpretation of the law.

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- The Industrial Commission denied Sandra's claim for scheduled loss-of-limb benefits.
 - It held that Moorehead did not suffer an "actual" loss of use of his arms or legs because he was comatose for the brief time between the accident and his death, and therefore did not "perceive or experience" any suffering or disability as a result of his quadriplegia before he died.
- Sandra appealed the commission's ruling.
- A magistrate of the 10th District Court of Appeals recommended that that court grant a writ of mandamus ordering the commission to recognize Moorhead's injuries as an actual loss of use of his limbs and to process his wife's claim accordingly.
- The 10th District rejected the magistrate's recommendation, holding that the Industrial Commission's ruling denying Sandra Moorhead's loss-of-limb claim was not an abuse of the commission's discretion.
- Mrs. Moorehead exercised her right to appeal the 10th District's ruling to the Supreme Court.

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- Chief Justice Thomas J. Moyer, the Court overruled the 10th District and held that Moorehead was entitled to scheduled loss benefits under the loss-of-limb provision. The Chief Justice wrote that:
 - “The court of appeals deferred to the commission’s interpretation that ‘loss of use’ does not occur when an injured worker ‘survives an industrial injury in an unconscious state for only a brief period and never actually experiences the disabling effects of the injury.’
 - We disagree.” Citing the plain language of the statute, Chief Justice Moyer noted that it “provides that compensation is payable to an employee when the employee loses a body part that is listed on a schedule set forth in the statute,” and said **the statute makes no reference to either a worker’s duration of survival after an injury or cognizance of his injuries.**
 - “We have long recognized that neither administrative agencies nor this court ‘may legislate to add a requirement to a statute enacted by the General Assembly.’ ... Rather, in interpreting statutes ‘it is the duty of this court to give effect to the words used, not to delete words used or insert words not used,’ wrote the Chief Justice.
 - “We therefore cannot condone the commission’s addition of a requirement that a worker survive for some extended period of time, left unspecified by the commission or General Assembly, when considering the worker’s entitlement to a scheduled loss benefit.
 - Similarly, there is no language in R.C. 4123.57(B) requiring that an injured worker be consciously aware of his paralysis in order to qualify for scheduled loss benefits.”

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- Moyer concluded that “(t)his court should not graft duration-of-survival or cognizance requirements to R.C. 4123.57(B), because the statute has no text imposing them. Public policy arguments relative to the requisites of scheduled loss benefits pursuant to R.C. 4123.57 are better directed to the General Assembly.”
- The majority opinion was joined by Justices Alice Robie Resnick, Paul E. Pfeifer, Maureen O’Connor and Judith Ann Lanzinger.
- Justice Evelyn Lundberg Stratton entered a separate concurring opinion, joined by Justice Terrence O’Donnell,
 - State ex Rel. Estate of McKenney v. Industrial Commission should be applied

Merely dead or Sincerely dead?

As Coroner I must aver,
I thoroughly examined her,
And she's not only merely dead,
She's really most sincerely dead.



- ME of Munchkinland determination re: Evanora, Wicked Witch of the East.

Definition of Death

- **2108.40 Definition of death.**
- An individual is dead if the individual has sustained;
 - Either irreversible cessation of circulatory and respiratory functions
 - or irreversible cessation of all functions of the brain, including the brain stem, as determined in accordance with accepted medical standards.
 - If the respiratory and circulatory functions of a person are being artificially sustained,
 - under accepted medical standards a determination that death has occurred is made by a physician by observing and conducting a test to determine that the irreversible cessation of all functions of the brain has occurred.

Definition of Instantaneous Death



Space Shuttle Challenger disaster
January 28, 1986

The flight, and the astronauts' lives, did not end at 73 seconds after launch.

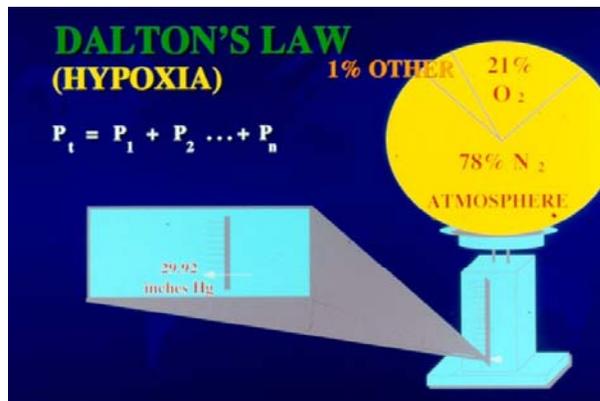
After Challenger was torn apart, the pieces continued upward from their own momentum, reaching a peak altitude of 65,000 feet.

The cabin hit the surface 2 minutes and 45 seconds after breakup, and all investigations indicate the crew was still alive until then.

What's less clear is whether they were conscious.

If the cabin depressurized (as seems likely), the crew would have had difficulty breathing - a few of the emergency air bottles (designed for escape from a smoking vehicle on the ground) had been activated.

The cabin hit the water at a speed greater than 200 mph, resulting in a force of about 200 G's — crushing the structure and destroying everything inside.



DALTON'S LAW EXAMPLES

SEA LEVEL

$$PO_2 = 0.21 \times 760 \text{ mmHg} = 160 \text{ mmHg}$$

$$PN_2 = 0.79 \times 760 \text{ mmHg} = \underline{600 \text{ mmHg}}$$

$$P_t = 760 \text{ mmHg}$$

18,000 Ft

$$PO_2 = 0.21 \times 380 \text{ mmHg} = 80 \text{ mmHg}$$

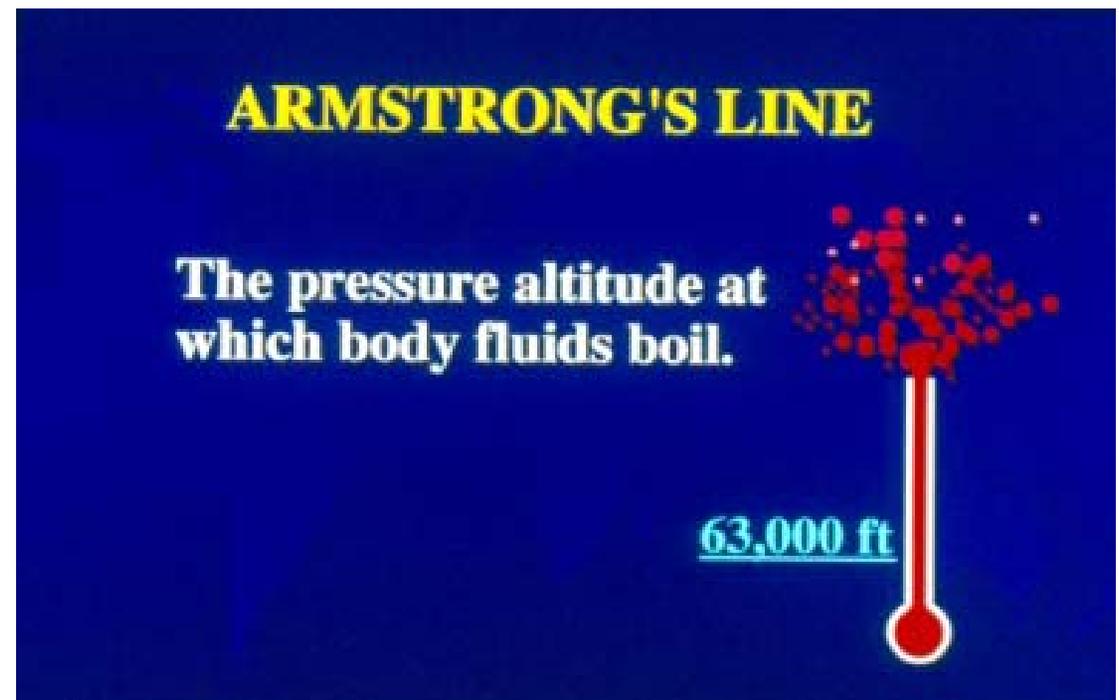
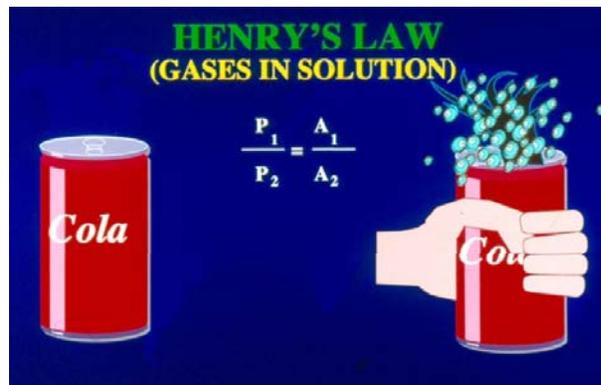
$$PN_2 = 0.79 \times 380 \text{ mmHg} = \underline{300 \text{ mmHg}}$$

$$P_t = 380 \text{ mmHg}$$

Hypoxia

- **Hypoxic Hypoxia**
- **Hypemic Hypoxia**
- **Stagnant Hypoxia**
- **Histotoxic Hypoxia**

<u>Altitude (ft)</u>	<u>TUC</u>
40,000	15 seconds
35,000	20 seconds
30,000	30 seconds
28,000	1 minute
26,000	2 minutes
24,000	3 minutes
22,000	6 minutes
20,000	10 minutes
15,000	Indefinite



Altitude or Depth	ATM	mmHg	PO2
60,000 ft Above Sea Level (ASL); Armstrong's Line 63,000		51.715	0
45,000 ft ASL	1/7	110	
34,000 ft ASL (Mt. Everest 29k ft)	1/4	187	43
18,000 ft ASL (Himalayas)	1/2	379	72
8,000 ft ASL (Mexico City)	3/4	564	112
Sea Level	1	760	149
33 ft Below Sea Water (BSW)	2	1520	1,520
66 ft BSW	3 (2.4)	2280	2,280
99 ft BSW	4	3040	
132 ft BSW	5	3800	

Questions to Ask

- Did the injured worker die instantaneously?
- Was the injured worker being artificially sustained?
 - EMS, witnesses, etc.
 - Is duration of function after injury distinct period of time

Terminating Resuscitation

I. Withholding/Terminating Resuscitative Efforts

- **Condition Not Compatible with Life:**
 - Injuries which are so severe that they are not survivable (decapitation, thoracic transection, brain matter, etc.).
 - Victims of an unwitnessed medical event outside of a hospital setting who are found pulseless, apneic and without pupillary reflexes may also meet medical futility criteria.
- **Obvious Signs of Death:** Such as rigor mortis or lividity, are reasons to withhold CPR.
- **Unsafe Conditions:** If starting CPR would place the rescuer at risk, withholding efforts is appropriate until the scene is safe.

II. Terminating Resuscitation

- In many cases, it is a judgment call. Various factors play a part in deciding when to terminate a resuscitation effort. For example, practitioners should consider whether the arrest was witnessed, the initial arrest rhythm and the time elapsed between arrest and defibrillation/CPR. A return of spontaneous circulation at some point during the resuscitative effort should also be considered.

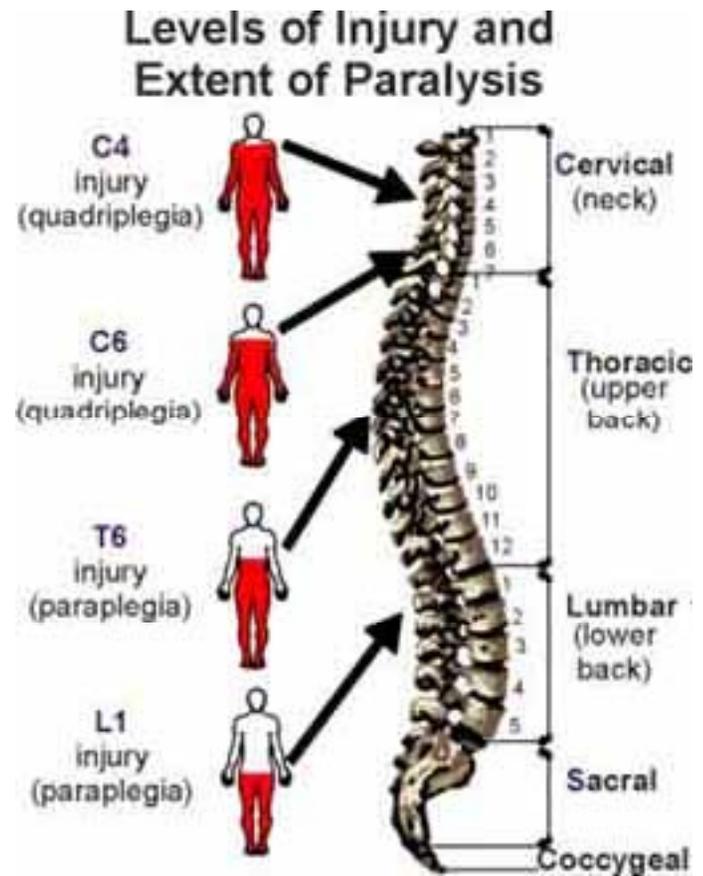
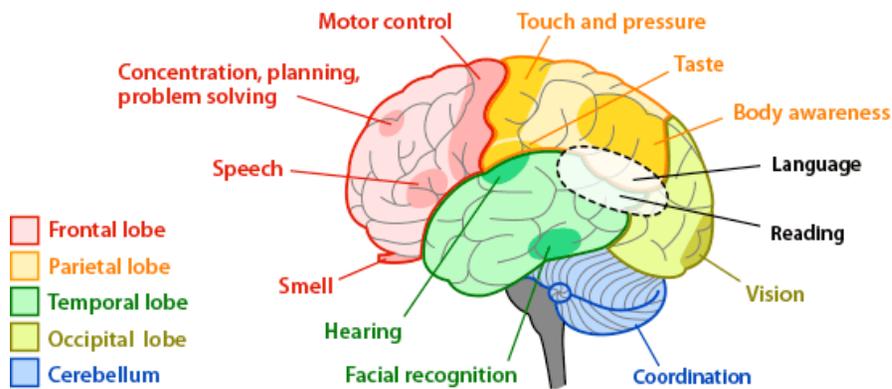
III. Additional Considerations

- It is important that healthcare workers understand the legal and ethical considerations for making the decision to withhold or terminate resuscitation. Life- saving measures can be terminated once you have determined the patient is a DNR.
- Family members may have different needs based on their spiritual beliefs and cultural background. Healthcare workers need to be sensitive to these needs and provide families with support from social workers and hospital chaplains when resuscitation is terminated.

Cerebral, Drug Induced, or Functional

- State ex rel. Carter v. Indus. Comm.
- Carter's children filed for loss of use benefits after Carter was shot and killed while working as a nightclub bouncer.
- Carter died three days after the shooting. In the interim, his right leg was amputated, he was sedated and chemically paralyzed.
- While there was no dispute Carter's children were entitled to loss of use benefits for the amputation of the right leg, they argued they also were entitled to benefits for the left leg and both arms because the chemically-induced paralysis caused a loss of use that was rendered permanent because it continued up to Carter's death.
- The IC denied loss of use benefits for these limbs, and Carter's children then requested a writ of mandamus from the Tenth District Court of Appeals in an effort to overturn the IC's decision.
- The Court denied the requested writ, finding the induced paralysis "was a temporary measure designed to aid in [Carter's] recovery," and there was no evidence his paralysis would have been permanent had he survived.

Brain or Spinal?



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- Moyer concluded that “(t)his court should not graft duration-of-survival or cognizance requirements to R.C. 4123.57(B), because the statute has no text imposing them. Public policy arguments relative to the requisites of scheduled loss benefits pursuant to R.C. 4123.57 are better directed to the General Assembly.”
- The majority opinion was joined by Justices Alice Robie Resnick, Paul E. Pfeifer, Maureen O’Connor and Judith Ann Lanzinger.
- Justice Evelyn Lundberg Stratton entered a separate concurring opinion, joined by Justice Terrence O’Donnell, in which she agreed with the majority holding that the commission’s denial of scheduled loss of limb benefits for Moorehead’s injury was not supported by R.C. 4123.57. She added, however, that in her view a recent Supreme Court ruling in State ex Rel. Estate of McKenney v. Industrial Commission should be applied to limit Sandra Moorehead’s award to one week of scheduled loss benefits.
- Citing the Court’s holding in McKenney that “the loss of earning capacity that scheduled loss compensation was intended to ameliorate ceases upon the death of the injured worker,” Justice Stratton wrote that “the presumed loss of earning capacity ceased upon William Moorehead’s death. At that point, Sandra Moorehead became entitled to apply for death benefits under R.C. 4123.59. I do not believe that the General Assembly intended for duplicate awards under these circumstances.”

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- The issue then became how many weeks of benefits Moorehead's widow should be paid for 95 minutes of quadriplegia.
- The Ohio Supreme Court decided not to address this issue, instead referring the matter back to the IC for a determination. However, the Court did offer the following guidance:
 - “[The] determination should be made in light of all relevant statutes and precedent, including our recent decision in State ex rel. Estate of McKenney v. Indus. Comm” **McKenney stands for the proposition that the loss of use statute anticipates the payment of benefits in weekly installments which cannot be claimed by an employee's heirs after his or her death** (i.e. installments which become due after the date of death).
- They concluded McKenney and the relevant statutes limited Moorehead's widow to one week of benefits because she could not receive more than Moorehead would have received for the period prior to his death.
- And because Moorehead only suffered the loss of use of his limbs for 95 minutes, he would have been entitled to only one week of benefits.
- Using the reasoning of the two justices, Moorehead's widow would have received \$2,084 (one week of benefits for the loss of use of four limbs at the rate of \$521 per week) instead of \$442,850 for the 850 weeks of benefits she sought.

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- Upon referral back to the IC, two of the three members of the IC voted to award Moorehead's widow all 850 weeks of benefits anyway, although they did follow the Ohio Supreme Court's guidance in McKenney to the extent of requiring the award be paid in weekly installments and not a lump sum.
- This outcome likely resulted because Moorehead's employer was no longer actively participating in the claim at the time of the IC hearing, and the Bureau of Workers' Compensation, for whatever reason, agreed that if loss of use benefits were payable, Moorehead's widow was entitled to all 850 weeks.

What both sides of the table should do

- Immediately start a thorough accident investigation
 - Time of accident and time of death
 - This would include interviewing and taking statements from any witnesses, EMS, ER personnel/provider
 - Obtain the results of any autopsy. Contact the coroner who performed the autopsy to determine whether any of the autopsy findings suggest the employee had lost the use of his or her arms or legs.
 - Medical experts, file review, post mortem photos



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