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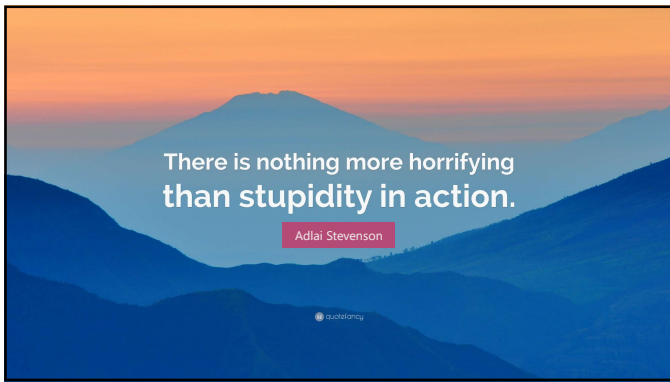
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- 1911: Ohio enacts Worker's Compensation legislation – voluntary
- 1912: Compulsory workers' compensation via Constitutional amendment
- Affirmative defenses no longer relevant
- Protect those who suffer work-related injuries regardless of their own negligence or fault – *State ex rel. Cotterman v. St Marys Foundry*
- Employers become insurers of the careless

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**Acts Contrary to  
PROCEDURE/POLICY**

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**Gross**

Perhaps most well-known case on this topic

Claimant violated workplace safety rule regarding placing water in a pressurized deep fryer to clean it

Voluntary abandonment case – no question underlying claim compensable

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**Automated Saw Operator**

Automated table saw programmed to cut multiple parts from larger material

Computer controlled operation; monitor confirms when programmed cuts are finished

**Procedure:** operator not to remove product until cycle confirmed to be complete

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**Automated Saw Operator**

**Policy:** no cell phone use while working

Distracted by cell phone, operator attempts to remove product prior to completion

Loses all or some of nine fingers

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**Industrial Paint Mixer**

Large rotating shaft mixes paint

**Procedure:** operator not to attempt to clean shaft while rotating

Easier to clean shaft while rotating – cloth and glove caught by rotating shaft; operator loses arm

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# Substance **ABUSE**

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## **Rocky Mountain High**

Jurassic Park for bears in Montana – claimant smokes pot before feeding bears

“Red” bites claimant, “Brodie” bites “Red” – claimant escapes pen with severe injuries

Injury found to be in course + scope of employment

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## **Rocky Mountain High**

“Presumably customers are unwilling to pay cash to see dead and emaciated bears”

While using marijuana to “kickoff a day of working around grizzly bears was ill-advised and mind-bogglingly stupid,” bears are “equal opportunity maulers” and without evidence of the level of impairment, finding that drug use was not a contributing factor was appropriate

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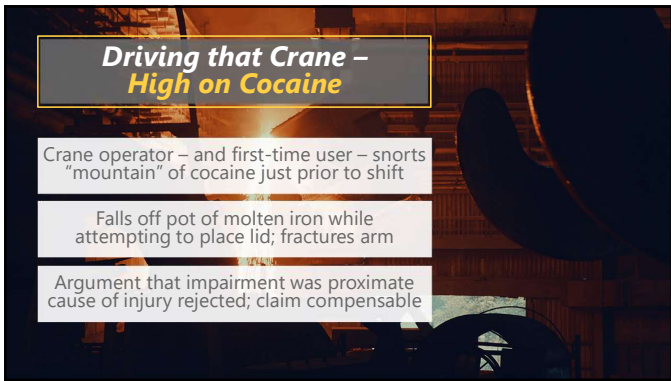
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**Driving that Crane –  
High on Cocaine**

Crane operator – and first-time user – snorts “mountain” of cocaine just prior to shift

Falls off pot of molten iron while attempting to place lid; fractures arm

Argument that impairment was proximate cause of injury rejected; claim compensable

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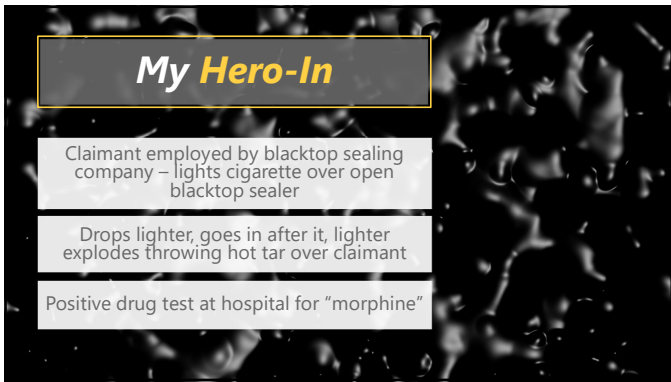
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**My Hero-In**

Claimant employed by blacktop sealing company – lights cigarette over open blacktop sealer

Drops lighter, goes in after it, lighter explodes throwing hot tar over claimant

Positive drug test at hospital for “morphine”

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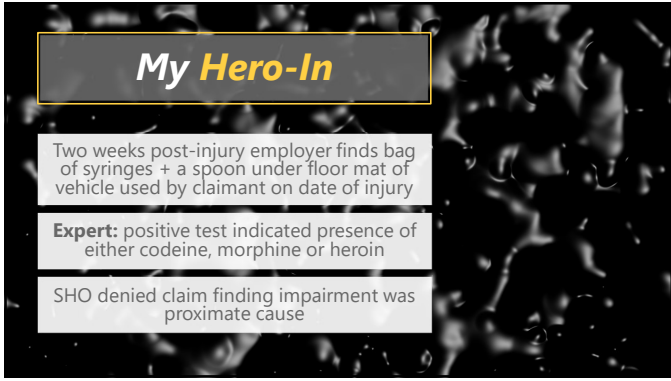
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**My Hero-In**

Two weeks post-injury employer finds bag of syringes + a spoon under floor mat of vehicle used by claimant on date of injury

**Expert:** positive test indicated presence of either codeine, morphine or heroin

SHO denied claim finding impairment was proximate cause

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## What Does This Mean?

- Despite best attempts, employees will find a way to get hurt and, so long as they are doing their job, that injury will be compensable
- Conduct however could be so outrageous as to be deemed not in the course of and arising out of employment (e.g. horseplay, intentional injury)

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### ***Serious Cervical Decompression***

Claimant wraps chain of "bull hoist" around neck – activates hoist

Tells ER doc he was attempting to "fix" chronic neck problems

Claim for neck injury denied as intentionally inflicted

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### ***Hall v. Habitat for Humanity***

Hall + Hill pickup donated items from old fireworks warehouse

While returning, both employees are smoking and "somehow" ignite firework

Workers' Compensation Board denied claim – find not in scope of employment

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**Supreme Court  
AFFIRMED**

"While confined inside a moving vehicle, Hall removed the firework from inside his lunch pail and held it in his left hand. Hall acknowledged that this firework was no longer properly assembled, because it was missing the stick it would normally be attached to. Both Hall and Hill also knew this firework was dangerous because someone they knew had recently died as a result of an injury sustained from a firework, and Hill cautioned Hall to be careful not to light it. Nonetheless, they chose to smoke cigarettes near the short-fused, softball-sized firework. Moreover, Hall claimed that the explosion must have occurred after a cigarette spark was swept up into the crosswind from the open window and then ignited the fuse of the firework. The Board, however, found Hall to be incredible [sic], noting that his 'version of events relies on a series of coincidences[.]' . . . leading to the reasonable conclusion that the explosion resulted from Hall's horseplay."

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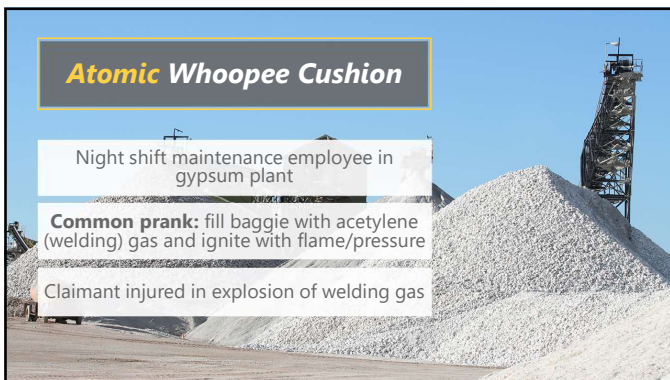
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**Atomic Whoopee Cushion**

Night shift maintenance employee in gypsum plant

**Common prank:** fill baggie with acetylene (welding) gas and ignite with flame/pressure

Claimant injured in explosion of welding gas

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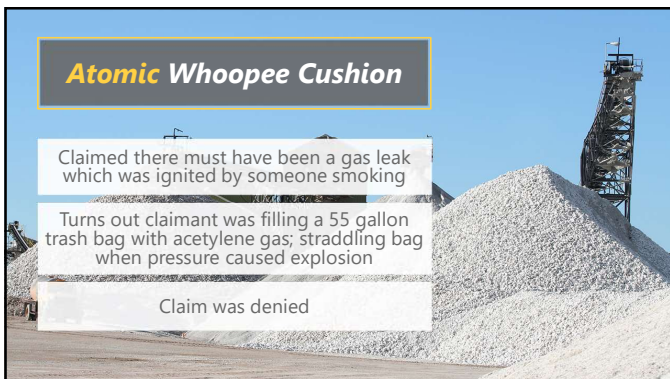
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**Atomic Whoopee Cushion**

Claimed there must have been a gas leak which was ignited by someone smoking

Turns out claimant was filling a 55 gallon trash bag with acetylene gas; straddling bag when pressure caused explosion

Claim was denied

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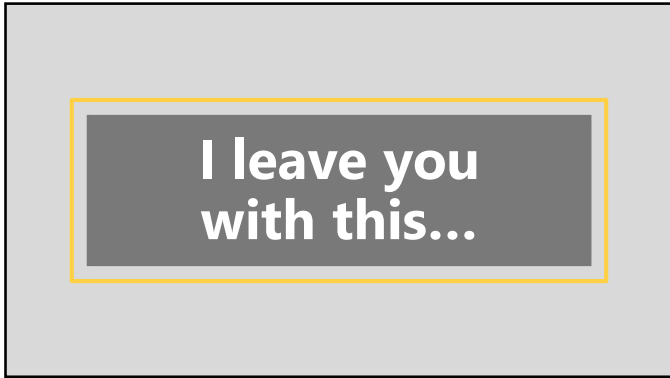
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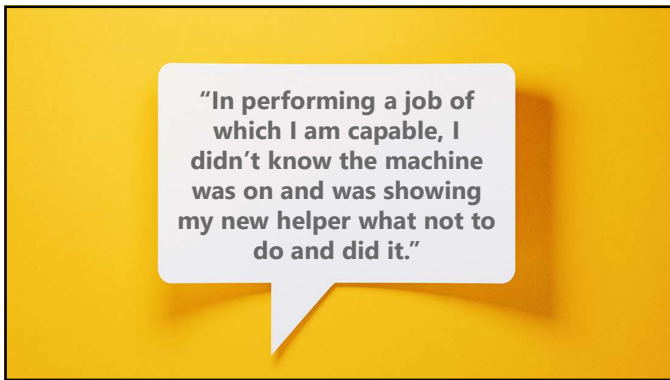
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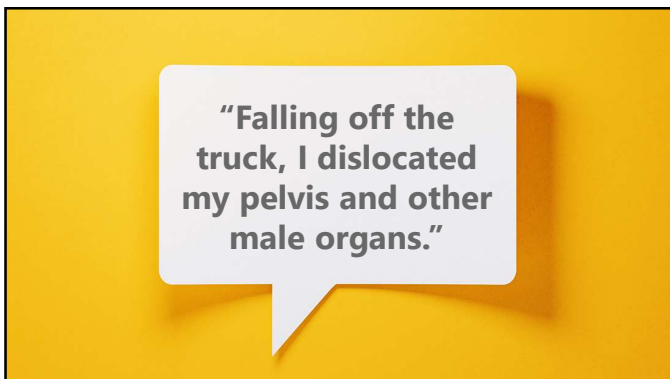
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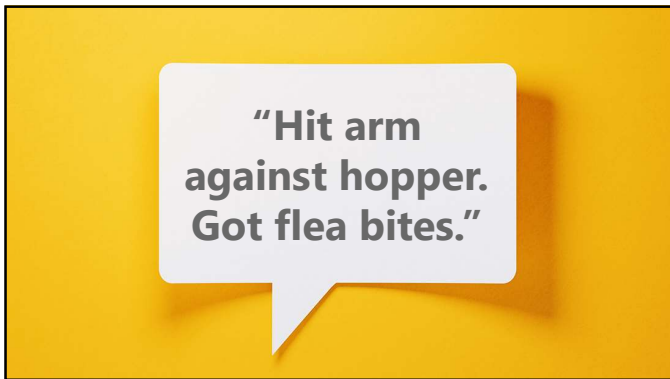
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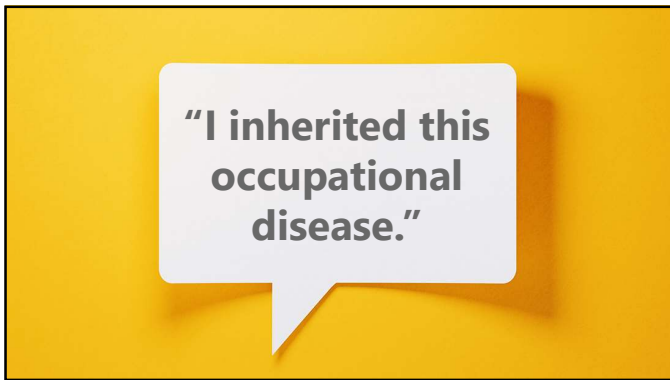
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**Thank You**



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**KEGLER  
 BROWN  
 HILL +  
 RITTER**

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