

Supreme Court of Louisiana

FOR IMMEDIATE NEWS RELEASE

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **20th day of October, 2023** are as follows:

PER CURIAM:

*2023-C-00410 JOSE FLORES MORAN VS. AMTRUST NORTH AMERICA AND
 JACQUES-IMO CAFE, LLC*

WRIT GRANT RECALLED. WRIT DENIED. SEE PER CURIAM.

Weimer, C.J., concurs in the result and assigns reasons.
Crichton, J., additionally concurs and assigns reasons.
Genovese, J., concurs in the result and assigns reasons.
Griffin, J., concurs and assigns reasons.

SUPREME COURT OF LOUISIANA

NUMBER 2023-C-00410

JOSE FLORES MORAN

VERSUS

AMTRUST NORTH AMERICA AND JACQUES-IMO CAFÉ, LLC

On Writ of Certiorari to the Court of Appeal, Fifth Circuit,
Office of Workers' Compensation, District 7

PER CURIAM

We granted plaintiff's application for a writ of certiorari on June 21, 2023. After considering the briefing and oral argument of the parties, the record, and the applicable law, we conclude the judgment below does not require the exercise of this court's supervisory authority. Accordingly, we recall our order of June 21, 2023 as improvidently granted, and we deny plaintiff's writ application.

SUPREME COURT OF LOUISIANA

No. 2023-C-00410

JOSE FLORES MORAN

VS.

AMTRUST NORTH AMERICA AND JACQUES-IMO CAFÉ, LLC

*On Writ of Certiorari to the Court of Appeal, Fifth Circuit,
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WEIMER, C. J., concurring.

Although I respectfully disagree with the decision to recall the writ, I concur because I ultimately reach the same result.

I have long concluded that recalling writs as improvidently granted is poor practice. See, e.g., State v. Crandell, 05-1060 (La. 3/10/06), 924 So.2d 122 (Weimer, J., dissenting); **Davis v. Prescott**, 13-0669 (La. 11/5/13), 130 So.3d 849, 851 (Weimer, J., dissenting); **George v. Dugas**, 16-0710, p. 2 n.1 (La. 11/7/16), 203 So.3d 1043, 1043 n.1 (Weimer, J., dissenting); **Mitchell v. State**, 16-1097 (La. 1/25/17), 219 So.3d 1061 (Weimer, J. dissenting). Once this court has granted a writ, spent time reviewing the record, required the parties to brief the issues and travel to court to participate in oral argument, it is generally more prudent to address the issues in an opinion. However, in this case, I must concur in the ultimate result based on the underlying facts. Notably, this case presents as a worker's compensation matter—not a tort action. Thus, there is no authority for this court to grant the relief requested by plaintiff.

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Compensation, District 7

CRICHTON, J., additionally concurs and assigns reasons:

I agree with the decision to recall the writ in this case, thereby letting the court of appeal's decision stand. I write separately to again highlight the pressing need for legislative amendment in this area of the law. As I previously noted in *Griggs v. Bounce N' Around Inflatables*, 18-726 (La. 1/30/19), 281 So. 3d 628, 634 (Crichton, J., additionally concurring), the legislature maintains the sole authority to expand the workers' compensation statutes to include exemption of minors from their exclusivity. Once again, the employer in this matter will benefit from these statutes despite its illegal conduct of hiring a minor. I again echo the words of Professor H. Alston Johnson, III:

The legislature should decide whether loss of tort immunity is the proper sanction for an employer who violates the Child Labor Law. If so, this sanction should be specifically stated. If not, an appropriate and specific sanction should be provided. In that process, one should not lose sight of the concept that if a penalty is regarded as too harsh, it might never be applied, even though some penalty of a lesser nature would be. In other words, the sanction should fit the violation, or else the violation might go unpunished.

H. Alston Johnson, III, 13 La. Civ. L. Treatise, Workers' Compensation Law and Practice § 53 (5th Ed.)

The minor child in this case was hired at the age of thirteen and injured during the performance of one of his job duties, which occurred when he was fourteen years old: emptying boiling oil and grease from the kitchen's deep fryer and transporting

that hot cooking oil down a stairwell. This resulted in second and third degree burns to multiple parts of his body. *See Moran v. AmTrust N. Am.*, 22-253 (La. App. 5 Cir. 3/1/23), 360 So. 3d 75, 77. Due to these significant injuries, any work he now performs must be out of the sunlight due to the nature of his injuries, and he also cannot be exposed to heat from a stove or oven or work in environments that are not air-conditioned. *Id.*

Despite the seriousness of this injury, an employer in blatant and flagrant violation of the Child Labor Laws has once more gained the advantage of the plain language of a statute in desperate need of revision.

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Genovese, J., concurs in the result and assigns the following reasons.

Only because this matter comes before us as a workers' compensation case, and not a tort action, do I concur in the result; otherwise, I would have revisited *Griggs v. Bounce N'Around Inflatables, L.L.C.*, 18-0726 (La. 1/30/19), 281 So.3d 628, as that case was decided on particularized facts clearly distinguishable under the facts in this case.

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GRIFFIN, J., concurs and assigns reasons.

Notwithstanding the Court's decision to recall the writ as improvidently granted, *Griggs v. Bounce N' Around Inflatables, L.L.C.*, 18-0726 (La. 1/30/19), 281 So.3d 628, may require reassessment to avoid any further issues arising from La. R.S. 23:1035 of the Louisiana Workers' Compensation Act.