

IN THE SUPREME COURT OF OHIO

07-0061

RALPH HODGES, : On Appeal from the
 : Hamilton County Court of Appeals
 Plaintiff-Appellant, : First Appellate District
 :
 v. :
 : Court of Appeals
 CIN STEEL PRODUCTS CO., et al. : Case No. C-050533
 :
 Defendants-Appellees. :

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT RALPH HODGES

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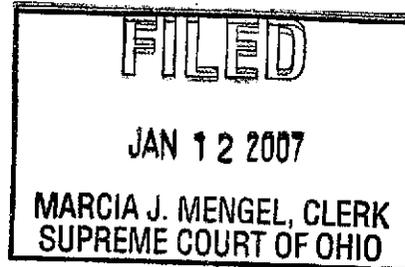


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EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST

This cause of action raises an important issue regarding whether the settlement of an injury claim in 1995 can be used by the Ohio Bureau of Workers' Compensation (BWC) to bar an individual from pursuing an occupational disease claim which did not exist until 2002. More specifically, this case raises issues as to whether the BWC should be able to apply broad settlement language to prevent a claimant from pursuing an occupational disease claim that was neither existent nor vested at that an injury claim was settled.

In this case, the Court of Appeals ruled that the BWC could bar the pursuit of the occupational disease claim based on the previous settlement agreement. The rationale of the Court was that, since the blood transfusion occurred before the settlement agreement was reached, Mr. Hodges claim for hepatitis C is covered by the agreement. The Court also ruled, with questionable rationale, that Mr. Hodges' hepatitis C was not an occupational disease, but rather a flow through or residual injury.

The decision of the appellate court overlooks both the legal and medical differences between injury claims and occupational disease claims in a manner which unfairly prejudices injured workers by allowing the BWC to utilize broad language to block occupational disease claims that are neither existent nor foreseeable at the time that an injury claim is settled. Mr. Hodges may have contracted hepatitis C prior to the settlement of his 1986 claim, but, at the time of any settlement, he had no ability to know that he contracted an occupational disease. More importantly, because he had no knowledge of any problem, he had no vested occupational disease claim at that time. Consequently, the effect of this decision is to unfairly bar an injured worker from pursuing an occupational claim based on the settlement of a claim involving separate issues which occurred before the occupational disease claim could legally have existed.

Additionally, for the Court to assert that Mr. Hodges' hepatitis C is not an occupational disease is incorrect. His condition is an occupational disease under the statutory definition set forth in R.C. 4123.05(F). The reason that Mr. Hodges condition must be considered an occupational disease is that it arose from the peculiar circumstances manifested by his employment. Because Mr. Hodges' work injury necessitated a hospital stay following his injury, the course of employment never ended. Therefore, Mr. Hodges contracted hepatitis C during the course of his employment. His hepatitis C did not flow or arise from his industrial injuries through the medical progression of those conditions. It arose because the circumstances brought about by those conditions extended the course of his employment in a fashion which led Mr. Hodges to face a distinct exposure to the occupational disease of hepatitis C that he would not have faced if he was not in the course of his employment. Because this exposure was a distinct incident that did not evolve from the underlying conditions themselves, it must be considered an occupational disease. If it is not considered as such, Mr. Hodges is unfairly prejudiced, as he does not receive the protections that the law enacts for injured workers who contract diseases with extended latency periods.

What the Appellate Court's decision does is allow the BWC to bar an occupational disease claim based on a previous settlement despite the fact that consideration was never provided to the injured worker for the settlement of the unforeseeable occupational disease claim. In essence, this decision ignores the realities recognized by both medical practice and legal standards for occupational disease claims, the Appellate Court's decision provides the BWC a get out of jail free card with regard to occupational diseases which are not foreseen, considered, or legally recognizable at the time of settlement. Allowing such a result, which was clearly not an intended consequence of any settlement, is clearly against public policy.

STATEMENT OF THE CASE AND FACTS

In late 2002, Appellant Ralph Hodges took time away from his job as a Milford police officer to donate blood. Soon thereafter, Mr. Hodges was informed that his blood had tested positive for Hepatitis C. Mr. Hodges followed this diagnosis by seeking treatment with specialist Dr. Stephen Ionna, who reviewed the risk factors for Hepatitis C, and informed Mr. Hodges that the most likely cause of this disease was a blood transfusion that Mr. Hodges had received in 1986.

As the blood transfusion that the Appellant received was made necessary by a work related accident that Mr. Hodges suffered while employed at Cin Steel Products Company on June 11, 1986, Mr. Hodges filed a workers' compensation claim, requesting recognition of Hepatitis C as an occupational disease. Despite the fact that Appellant's occupational disease arose from events that occurred during the course of his employment, and despite the fact that his claim for Hepatitis C did not exist before it vested in 2002, the Bureau of Workers' Compensation (BWC) not only denied Mr. Hodges claim, it refused to even consider the matter. The reasoning offered by the BWC was that Mr. Hodges had settled his 1986 claim.

While the BWC could not produce settlement papers signed by Mr. Hodges, it claimed that he had signed an agreement barring all claims which were in any way related to his 1986 claim or his employment with Cin Steel Products. The Industrial Commission agreed with the BWC's position, and denied Appellant's claim without even considering the merits. Following the Industrial Commission's denial of his claim, Mr. Hodges filed an appeal into the Court of Common Pleas. Prior to the case moving forward, summary judgment was granted on the grounds that Mr. Hodges had settled his 1986 claim. The 1st District Court of Appeals upheld this decision on appeal.

Appellant asserts that the decisions denying his claim are inappropriate for a number of reasons, and that if these decisions are upheld, the result would be a bar on legitimate claims

which is against public policy. As the following will explain, it is inappropriate to allow a broad settlement agreement to bar a claim neither exists, nor is foreseeable at the time of the settlement. Allowing such preclusion to occur is particularly unfair to the injured worker based on the protections which the law sets forth regarding the vesting of occupational disease claims; the standard of law for occupational disease claims clearly exists to protect against the very thing which has been attempted in this case, the preclusion of occupational disease claims due to the fact that they often go undetected for significant periods of time. Finally, it should be noted that this case would do nothing to lessen the general protection of settlements because it involves a condition which arose from circumstances brought about by Mr. Hodges 1986 injury, and not from complications which can be medically related to Mr. Hodges 1986 injuries themselves. Ralph Hodges took every step which the law requires once he was made aware that he had contracted an occupational disease. Clearly, it is against public policy to bar him from pursuing his claim based on a settlement agreement which may have been reached before it was possible for any occupational disease claim to exist.

In support of its position on these issues, appellant presents the following argument.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. 1: A settlement agreement cannot bar a future claim for an occupational disease which did not exist, and was not foreseeable at the time of any settlement.

Parties to a workers' compensation claim cannot agree to bar future claims that do not exist and are not foreseeable at the time of negotiations. *See, e.g. McHenry v. Mihm*, 1992 WL 66372 (2nd Dist. Apr. 3 1992). In *McHenry*, the Court found it unreasonable to bar a work related injury claim that arose after the settlement agreement in question based on a general provision barring future claims. Appellees are trying to bar a claim under similar conditions here.

It should be noted that there does not appear to exist prior jurisprudence on this particular workers' compensation issue from the Ohio Supreme Court. This does not mean that the Court is without reference on this issue. Very similar cases emanating from the 8th District Court have considered similar issues. In these decisions, which include *Anderson v. A.C. & S., Inc.*, (8th Dist. 2003), 154 Ohio App.3d 393, 797 N.E.2d 537, the court has ruled in the injured workers' favor, asserting that a settlement cannot be used to bar occupational disease claims that have not vested at the time of that settlement.

Clearly, substantial issues exist as to whether the settlement agreement put forth by the Appellees could possibly bar a claim like Mr. Hodges. *McHenry* and *Anderson* also raise general issues as to whether a settlement agreement can bar claims which were not foreseeable by any party at the time of the settlement. Most importantly, allowing a party to bar unforeseeable, non-existent future claims allows a party to preclude a broad range of unknown actions in a fashion which is contrary to public policy.

Proposition of Law No. 2: Future claims can only be barred by settlement agreement if the claimant "had or could have filed" the claim prior to the settlement.

The very case relied upon by Appellees in their original summary judgment briefs, *Myers v. Industrial Commission of Ohio*, 1988 Ohio App. Lexis 3763 (September 21, 1988), states that, "[a] settlement agreement extinguishes all claims, for injury that the claimant had or could have filed in connection with the claimant's employment with a particular employer." According to the very language cited by the Appellees, as this language asserts that a settlement agreement extinguishes all claims that "**claimant had or could have filed.**" Appellant asserts that this language demonstrates that the settlement agreement does not justify barring Mr. Hodges' hepatitis C claim, as under Ohio law, his claim had not yet vested at the time of the alleged

settlement. Consequently, claimant had not and could not have filed a claim for Hepatitis C at the time of any settlement and, under the very case relied upon by the Appellees, the barring of this case was improper.

Proposition of Law No. 3: The statutory provisions regarding the vesting of occupational disease claims demonstrate a clear intent to prevent occupational disease claims from being barred prior to the time that they are known to exist.

In granting and upholding summary judgment, the courts have ignored a key principal of workers' compensation law: the fundamental difference between occupational disease claims and industrial injury claims. Unlike work related injury claims, work related occupational disease claims are often not known of by an injured worker at the time of their onset. Consequently, Ohio law differentiates between injury claims and occupational disease claims in order to protect injured workers from being victimized by the often hidden nature of occupational diseases.

The primary difference in the laws regarding occupational diseases and those for injuries involves the statute of limitations. For injury claims, the statute of limitations begins on the date of injury. R.C. 4123.84. For occupational disease claims, the statute of limitations begins when the following three prongs are met: 1) the disease is diagnosed; 2) the disease is treated; and 3) the disease is related to work exposures. R.C. 4123.68. Before these three prongs are met, the statute of limitations does not run.

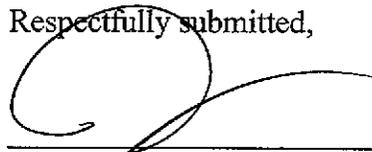
This three prong test exists to protect injured workers' from having legitimate occupational disease claims barred simply because they were not known to the injured worker for a period of time. Under workers' compensation law, an occupational disease cannot be barred before it vests under the three prong test stated above. In this case, the Appellees are attempting to bar an occupational disease claim based on an agreement they claim was signed before the disease vested itself as a claim. The laws regarding occupational diseases clearly indicate that a claim

cannot be eliminated before it is known to exist. As Appellant filed his occupational disease claim in a timely manner under the law, Appellant has a right to have his claim heard.

CONCLUSION

For the reasons discussed above, this case involves matters of public and great general interest. The appellant requests that this court accept jurisdiction in this case so that the important issue of whether the settlement of a claim can bar the pursuit of a future occupational disease claim under workers' compensation can be decided.

Respectfully submitted,



Jeffrey W. Harris (0077098)
Attorney for Appellant, Ralph Hodges

Certificate of Service

I hereby certify that a copy of the foregoing was served via ordinary U.S. mail, postage prepaid, this 1/ day of January, 2007 upon the following:

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Jeffrey W. Harris
Attorney at Law

HAMILTON COUNTY CLERK OF COURTS
230 EAST NINTH ST ROOM 12100
CINCINNATI OH 45202

IN ACCORDANCE WITH APPELLATE RULE 30(A),
YOU ARE HEREBY GIVEN NOTICE THAT THE
FOLLOWING ORDER OR JUDGMENT HAS BEEN
JOURNALIZED ON THE 29TH OF NOVEMBER,
2006, IMAGE NUMBER .

JUDGMENT ENTRY AFFIRMING JUDGMENT TO
TRIAL COURT A-0408142.
NOTICE IS SENT BY ORDINARY MAIL
TO ALL PARTIES REQUIRED BY LAW.
Deputy: TRACEY HYDE
GREGORY HARTMANN - Clerk of Courts

HARRIS & BURGIN

DEC 01 2006

Case No. C 0500533

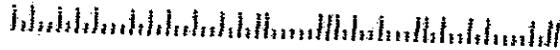
RALPH HODGES

- vs -

CIN STEEL PRODUCTS CO

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ENTERED
NOV 29 2008

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

RALPH HODGES, :
 :
Plaintiff-Appellant, :
 :
vs. :
 :
CIN STEEL PRODUCTS CO., :
 :
and :
 :
JAMES CONRAD, ADMINISTRATOR, :
OHIO BUREAU OF WORKERS' :
COMPENSATION, :
 :
Defendants-Appellees. :

APPEAL NO. C-050533
TRIAL NO. A-0408142

JUDGMENT ENTRY.



D71022811

We consider this appeal on the accelerated calendar and this judgment entry is not an opinion of the court.¹

On June 11, 1986, while employed by defendant-appellee Cin Steel Products Co. ("Cin Steel"), plaintiff-appellant Ralph Hodges suffered a work-related injury when his arm was caught in a machine. Hodges required hospitalization, surgery, and a blood transfusion. Hodges filed a workers' compensation claim, which was allowed for "joint disorder right shoulder, right rotator cuff syndrome, sprained right shoulder/arm, open wound of left hip, contusion left finger, and crushing injury of

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

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forearm." Approximately nine years after his injury, in December of 1995, Hodges settled his claim for \$10,000 and a waiver of a \$1962.17 overpayment.

On December 2, 2002, Hodges was diagnosed with hepatitis C. In 2003, Hodges filed a claim for workers' compensation benefits, alleging that he had contracted hepatitis C as a result of the 1986 blood transfusion necessitated by his industrial injury. The staff hearing officer concluded that the 1995 settlement agreement barred Hodges's claim. The Industrial Commission upheld the denial of Hodges's claim.

Hodges appealed the Industrial Commission's decision to the common pleas court. Cin Steel and the administrator filed motions for summary judgment, alleging that the settlement agreement barred Hodges's claim. The trial court granted the motions for summary judgment. Hodges has appealed.

Hodges's sole assignment of error alleges that the trial court erred in granting the motions for summary judgment. We note initially that Hodges's claim was for a flow-through or residual injury. The claim did not qualify as a traditional occupational-disease claim because the claimed disease did not meet the definition of "occupational disease" set forth in R.C. 4123.01(F).²

Summary judgment is proper pursuant to Civ.R. 56(C) when (1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and with the evidence viewed most strongly

² R.C. 4123.05(F) provides that " 'occupational disease' means a disease contracted in the course of employment, which by its causes and the characteristics of its manifestation or the condition of the employment results in a hazard which distinguishes the employment in character from employment generally, and the employment creates a risk of contracting the disease in greater degree and in a different manner from the public in general."

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in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party.³

In support of the motions for summary judgment, Cin Steel and the administrator presented (1) an amended settlement and release signed by Cin Steel and dated November 11, 1995; (2) the Bureau of Workers' Compensation's ("BWC") approval of the settlement agreement dated December 7, 1995; (3) the BWC's settlement check endorsed by Hodges; and (4) the affidavit of Jill Jakab, chief regional attorney for the BWC, confirming the language that had been used in settlement agreements in December of 1995, and confirming that the original settlement agreement executed by Hodges was unavailable due to the BWC's document-retention policy, which required that documents be retained for only seven years. Hodges did not dispute that he had executed a settlement agreement for the 1986 injury.

Pursuant to Jakab's affidavit, the settlement agreement executed by Hodges stated, "That upon the execution of this agreement and the dismissal of the Notice of Appeal and Complaint, by Plaintiff/Claimant at the costs of the Plaintiff/Claimant, in the above-referenced case on appeal from the disallowance of a workers' compensation claim, while denying all liability, the Defendant/Administrator will award Plaintiff/Claimant the sum of: Ten Thousand Dollars & No Cents (\$10,000). That said award in paragraph one (1) will be accepted by Plaintiff/Claimant in full and complete satisfaction and settlement of the cause of action herein involved, and in full and complete satisfaction and settlement of Ohio Workers' Compensation Claim * * * as well as any other actual or potential workers' compensation claim(s)

³ See *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 364 N.E.2d 267.

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with respect to injury or occupational disease where the date of injury or date of disability due to occupational disease, per R.C. 4123.85, occurred on or before the date of this agreement set forth above. Plaintiff/Claimant understands and agrees that, by signing this agreement, Plaintiff/Claimant waives all rights to workers' compensation claims for compensation, benefits, damages, medical or hospital expenses, prescriptions, drugs, medicines, nursing services, attorney fees, and/or expenses of any kind whatsoever, consistent with the terms of R.C. 4123.80."

A workers' compensation settlement agreement is a release that extinguishes a claim, debt, or right.⁴ An unambiguous settlement agreement is presumed to set forth the entire agreement between the parties.⁵ A workers' compensation settlement agreement is designed to terminate a claim by preventing or ending litigation, and it is enforceable by the parties.⁶

The unambiguous language of the settlement agreement in this case stated that it was in full and complete satisfaction of Hodges's workers' compensation claim, as well as any other actual or potential workers' compensation claims, where the date of the injury occurred on or before the date of the agreement. When Hodges executed the agreement in 1995, he released any future claims relating to the 1986 injury. Hodges alleged that he had contracted hepatitis C as a result of the blood transfusion he received for his 1986 industrial injury. Hodges stated that the transfusion had taken place on July 13, 1986. The alleged injury occurred prior to the execution of the settlement agreement. Therefore, the plain language of the agreement barred Hodges's claim.

⁴ *Myers v. Industrial Commission of Ohio* (Sept. 21, 1988), 1st Dist. No. C-870819.

⁵ See. id.

⁶ *Bedinghaus v. Administrator, Bureau of Workers' Compensation* (Mar. 16, 2001), 1st Dist. No. C-000468.

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The assignment of error is overruled. The judgment of the trial court is affirmed.

Further, a certified copy of this Judgment Entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN and HENDON, JJ.

JUDGE RUPERT A. DOAN was a member of the panel, but died before the release of this judgment entry.

To the Clerk:

Enter upon the Journal of the Court on November 29, 2006

per order of the Court *Michelle Malt*
Presiding Judge