

**IN THE SUPREME COURT OF OHIO**

|                        |   |                                    |
|------------------------|---|------------------------------------|
| STATE, EX. REL         | : | CASE NO.: 07-0061                  |
| RALPH HODGES           | : |                                    |
|                        | : | On Appeal from the First Appellate |
| Appellant,             | : | District of Ohio                   |
|                        | : | Hamilton County, Ohio              |
| v.                     | : |                                    |
|                        | : | Court of Appeals                   |
| INDUSTRIAL COMMISSION  | : | Case No.: C-050533                 |
| OF OHIO                | : |                                    |
|                        | : |                                    |
| CIN STEEL PRODUCTS CO. | : |                                    |
|                        | : |                                    |
| Appellees.             | : |                                    |

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**MEMORANDUM OPPOSING JURISDICTION OF THE SUPREME COURT  
OF OHIO ON BEHALF OF APPELLEE CIN STEEL PRODUCTS CO.**

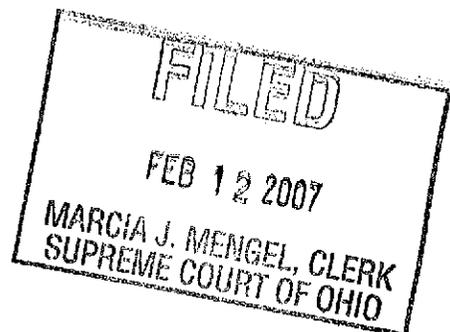
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**Authorities:**

Anderson v A.D.& S., Inc., (8<sup>th</sup> Dist 2003), 154 Ohio App. 3d 393 .....7

McHenry v Mihm, (1992) 1992 Ohio App. Lexis 1769 .....6, 7

Myers v Industrial Commission, (1988), 1988 Ohio App. Lexis 3763 ..... 1, 8

State ex rel Wright v Weyandt, (1977), 50 Ohio St 2d 194, 196;  
363 NE 2d. 1387, 1389 .....1

**II. EXPLANATION OF WHY THIS CASE IS NOT A CASE OF PUBLIC OR GREAT GENERAL INTEREST**

This case is not of public or great general interest because it involves a well settled area of the law regarding the enforceability of full and final settlement agreements. See State ex rel Wright v Weyandt, (1977), 50 Ohio St 2d 194, 196; 363 NE 2d. 1387, 1389. This standard in Wright, whereby a releaser is estopped from enforcing a right relinquished in a settlement agreement, was applied in the area of worker's compensation by the First District Court of Appeals in Myers v Industrial Commission, (1988), 1988 Ohio App. Lexis 3763. Myers held a release giving up or abandoning a claim or right was a valid contract. It is neither necessary nor prudent to re-examine Wright.

In this action, Ralph Hodges, with the advice of counsel, signed a settlement agreement releasing Cincinnati Steel Products and the Ohio Bureau of Worker's Compensation of all present and future claims for injury or occupational diseases arising from his worker's compensation claim. He now seeks to avoid the settlement, not because of duress or fraud, but because he believes with hindsight that his bargain was not a good deal.

The Court of Appeals properly rejected Mr. Hodges' claim that the settlement agreement into which he entered precluded reopening his 1986 claim. The events leading and contributing to Mr. Hodges' claim purportedly arose out of a June 11, 1986 injury while Mr. Hodges was employed at Cincinnati Steel Products. Mr. Hodges received treatment for his injuries for approximately 10 years before entering into an agreement with Cincinnati Steel and the Bureau to settle all issues relating to or arising out of the 1986 claim. In consideration for releasing his rights in association with his claim, Mr. Hodges received \$10,000.00 and a waiver of overpayment. In 2002, he was diagnosed

with Hepatitis C that his physicians related to treatment he received as a result of his 1986 claim. Had he been aware of the Hepatitis C at the time of the settlement, Hodges asserts he would have demanded more money.

Hodges now claims that the settlement agreement is invalid because he did not consider a condition that had existed since the date of his injury in his demand for settlement due to the fact that he had never been tested for such condition prior to the settlement of this claim. In essence, these arguments are without merit. This is a case of a single claimant, who entered into a settlement agreement to release all claims arising out of a 1986 injury, whereby the claimant received valid consideration for this release and, after discovering a changed circumstance, wants to ignore the terms of the settlement agreement and pursue a claim that was already released under the terms of the settlement agreement. The validity of settlement agreements in worker's compensation cases has already been established. Therefore, this case presents no significant case of public or great general interest.

### **III. STATEMENT OF FACTS**

On June 11, 1986, Appellant, Ralph Hodges, was employed at Cincinnati Steel Products when he sustained an injury in the scope of his employment. The claim was allowed for "joint disorder right shoulder, right rotator cuff syndrome, sprained right shoulder/arm, open wound of left hip, contusion of left finger, and crushing injury of the forearm. His claim was assigned Claim No. 86-14626. He received various treatments as well as compensation under this claim. In addition, he underwent surgery at University Hospital in Cincinnati, on or about July 13, 1986. Hodges continued to receive treatment for his injuries associated with Claim No. 86-14626 until December 7, 1995 when he

entered into a settlement agreement with the Bureau and Cincinnati Steel Products. The settlement agreement paid Hodges \$10,000.00 and waived an overpayment that had existed in the claim in the amount of \$1,962.17.

Because of the time that elapsed between the execution of the Settlement Agreement, the approval of the Settlement Agreement, and the filing of the new claim, as well as the State of Ohio's document retention policy, no fully executed Settlement Agreement is available. The parties did present evidence of the Settlement Agreement and Release to the trial court by way of the following documents:

1. Amended Settlement Agreement and Release signed by the Employer, dated November 28, 1995;
2. The approval of the Settlement Agreement, dated December 7, 1995 and mailed December 8, 1995 filed by Leslie Johnson, the claims representative of the Governor's Hill Service Office;
3. The BWC settlement check, front and back, executed by Mr. Hodges; and,
4. Affidavit of Jill Jakab, Chief Regional Attorney for the Bureau, confirming the record of retention schedule as well as the language used in the Settlement Agreements in December of 1995.

The Settlement Agreement contained the following language as noted by the Affidavit of Jakab:

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 worker's compensation claim, while denying all liability, the Defendant/Administrator will award Plaintiff/Claimant the sum of Ten Thousand Dollars & No Cents (\$10,000.00).

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 Worker's Compensation Claim No. 97-606990 [sic] as well as any other actual or potential worker's compensation claim(s) 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 worker's 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.

In addition to that language in that agreement, claimant also signed a Release, a copy of which is signed by the Employer. In that Release, the claimant agreed as follows:

The injured worker for and in consideration of the receipt of the settlement terms approved by the BWC, which sum will be paid from the State Insurance Fund (SIF) on behalf of the Employer after approval by the BWC Administrator, unless within thirty (30) days after such approval the Administrator, the Employer or the injured worker withdraws consent to or unless the Industrial Commission of Ohio (IC) disapproves the Agreement, does hereby for him/herself and for anyone claiming by, through or under him/her, forever release and discharge the above-referenced Employer, its officers, employees, agents, representatives, successors and assigns, the IC, the BWC, the SIF, and all persons, firms or corporations from any and all claims demands, actions or causes of action incurred on or prior to the date of this Agreement, arising out of Ohio Revised Code Chapter 4121 or 4123 which he/she now has or which he/she may hereafter claim to have, whether known or unknown by reason of or in any manner growing out of the claims or parts thereof set forth above, and that any terms agreed to are subject to any valid court ordered child support.

The Industrial Commission approved the settlement via findings mailed December 8, 1995.

Subsequently, Hodges filed a claim in 2003 alleging he contracted Hepatitis C that was diagnosed in December of 2002. Hodges alleged he contracted the Hepatitis C as the result of a blood transfusion necessitated by surgery arising from Claim No. 86-14626.

Staff Hearing Officer Grosse specifically found that Hodges settled Claim No. 86-14626 in an Order mailed December 8, 1995. Under that rationale, the Staff Hearing Officer concluded she did not have jurisdiction to consider the claim and denied the claim.

From this Order, Hodges appealed to the Common Pleas Court. The trial court granted summary judgment to both the Employer and the Administrator, which was subsequently affirmed by the First District Court of Appeals. Hodges is now trying to appeal this decision to the Ohio Supreme Court.

#### **ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW**

##### **APPELLANT'S FIRST PROPOSITION OF LAW:**

##### **A SETTLEMENT AGREEMENT CANNOT BAR A FUTURE CLAIM FOR AN OCCUPATIONAL DISEASE WHICH DID NOT EXIST, AND WAS NOT FORESEEABLE AT THE TIME OF SETTLEMENT.**

Hodges asserts that the Settlement Agreement does not bar his claim for Hepatitis C because the claim for Hepatitis C did not exist and was not foreseeable at the time of the settlement. Hodges is trying to circumvent the terms of the Settlement Agreement by trying to argue that an occupational disease, even if contracted on the date of the original injury, cannot be released by a settlement agreement unless the injured worker is fully aware of its existence. If such a proposition is true, it would essentially render almost all Worker's Compensation Settlement Agreements meaningless since it would expose the

Bureau and employers to potential liability on almost every claim that would previously be considered settled.

Hodges relies on McHenry v Mihm, (1992) 1992 Ohio App. Lexis 1769, where the Court found it unreasonable to bar a work related injury claim that arose after a settlement agreement had a general provision barring all future claims. In McHenry, an injured worker had two worker's compensation injuries in 1972 and 1978 while employed with Navistar. (Id. at 2). In 1981, McHenry signed a settlement agreement settling her two worker's compensation claims for \$5,000. Id. The settlement agreement provided that the injured worker release all claims stemming from her employment with Navistar which she now has or may later come to have during her employment with the company. (Id. at 3). McHenry remained employed with Navistar after her settlement agreement, and in 1987 sustained a new injury to her knee. Id. This claim was recognized as an aggravation of a pre-existing condition. (Id. at 6). The employer alleged that the settlement agreement of 1981 completely barred McHenry from bringing an injury claim for any injury, new or pre-existing, while she remained employed with her employer. Id. The Supreme Court ruled in favor of McHenry, stating that a settlement agreement does not serve to bar the claims of an injured worker for future injuries occurring after the date of the original settlement agreement.

McHenry is not applicable to the present situation. Unlike McHenry, where the employee sustained a new injury in the scope of her employment years after signing a settlement agreement, Hodges' occupational disease claim stems directly from his 1986 injury. He asserts the claim should be allowed as a traditional flow through condition. Even though Hodges was not diagnosed with Hepatitis C until 2002, the disease was not

caused by any incident that occurred after the signed Settlement Agreement. McHenry only limits the scope of settlement agreements when a new claim arises independently from the claim resolved in the settlement agreement. Upon a close reading of McHenry, the court upholds the agreement to the extent that it bars claims against the employer for injuries or diseases relating to the 1972 and 1978 injuries, either known or unknown. However, a future claim for an independent injury will not be subjected to a prior settlement agreement.

Appellant tries further to confuse the argument by citing Anderson v A.D.& S., Inc., (8<sup>th</sup> Dist 2003), 154 Ohio App. 3d 393. In Anderson, the Court ruled that a railroad worker who had previously settled a claim for asbestosis did not release a future claim for mesothelioma relating from similar exposures. (Id. at 404). This case is not relevant in this context because it involves a claim under the Federal Employer Liability Act (FELA) which is not applicable here. Under FELA, the government, seeking to protect employees who work for common carriers, placed provisions in the law to limit settlements to claims that were already known by the parties at the time of settlement. (Id. at 402). Settlements under Ohio Worker's Compensation law have never followed the same requirements as stated under FELA nor are they obligated to follow these requirements.

**APPELLANT'S SECOND PROPOSITION OF LAW:**

**FUTURE CLAIMS CAN ONLY BE BARRED BY  
SETTLEMENT AGREEMENT IF THE CLAIMANT  
"HAD OR COULD HAVE FILED" THE CLAIM  
PRIOR TO THE SETTLEMENT.**

Hodges asserts that the Settlement Agreement does not bar his claim for Hepatitis C because the Claim for Hepatitis C did not exist and was not foreseeable at the time of the

settlement. However, the particular agreement signed by Hodges released all claims arising from the incident in July of 1986.

The Settlement Agreement specifically states that the Appellees shall be discharged “from any and all claims, demand, actions or causes of actions incurred on or prior to the date of this agreement.....which he now has or which he may hereafter claim to have, whether known or unknown by reason of or in any manner growing out of the claims or parts thereof set forth above.” See Release (*emphasis added*).

As stated by the court in Myers v Industrial Commission of Ohio, (1988) 1988 Ohio App. Lexis 3763, a release is the giving up or abandoning of a claim or a right, and that is a contract. By signing the release, a plaintiff surrenders a right which he or she would have otherwise had, to claim against a defendant. Id. The Myers Court goes on to state that Ohio Courts recognize such settlement agreements as valid contracts where the language is clear and unambiguous. Id.

The Appellant misinterprets the Myers decision in his brief. In Myers, the Court directly cited to the language of the agreement in upholding the validity of the contract. Id. The settlement agreement in Myers extinguished all claims “that the claimant had or could have filed.” Id. Myers held settlement contracts will be upheld as valid if they are clear and unambiguous. Hodges signed an agreement with similar language extinguishing all claims, “either known or unknown”, that arose from the 1986 injury. Just as Myers found the settlement language to be unambiguous and enforceable, the language in Mr. Hodges’ agreement is equally clear and unambiguous. Consequently, the claim Hodges, asserts herein, is barred under the signed Settlement Agreement.

**APPELLANT'S THIRD PROPOSITION OF LAW:**

**DUE TO STATUTORY DIFFERENCES BETWEEN  
WORKER'S COMPENSATION CLAIMS FOR  
INJURIES AND THOSE FOR OCCUPATIONAL  
DISEASES, SUMMARY JUDGMENT BARRING AN  
UNVESTED OCCUPATIONAL DISEASE CLAIM  
BASED ON THE SETTLEMENT OF A PRE-  
EXISTING INJURY CLAIM IS INAPPROPRIATE.**

Hodges attempts to assert that the separate standard for the vesting of occupational disease claims brings his diagnosis of Hepatitis C outside the scope of the Settlement Agreement. However, Hodges completely fails to address the fact that the language in the release specifically covered all injuries or occupational diseases that arose out of the 1986 injury. Even though Hodges' Hepatitis C was unknown to him until after he signed the Settlement Agreement, the disease allegedly arose from the 1986 injury, and his claim against his employer for this disease was released by the 1995 settlement agreement.

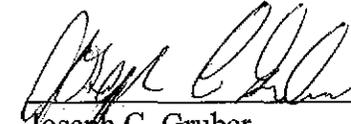
If Hodges had not signed the Settlement Agreement, he would have had a right to assert this claim when the disease was diagnosed in 2002. However, the 1995 Settlement Agreement released this right and any and all other rights Hodges would have had under the 1986 claim.

As such, the Court properly granted summary judgment. Even though the Hepatitis C claim was considered an occupational disease claim, the fact that it arose from the 1986 injury precludes the claim since this issue was settled as part of the 1995 Settlement Agreement.

#### IV. CONCLUSION

Based upon the foregoing, Defendant-Appellee, The Cincinnati Steel Products Company, submits the trial court and appeals court properly found there were no issues of material fact and that Defendants-Appellees were properly granted summary judgment as a matter of law.

Respectfully submitted,



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#### CERTIFICATE OF SERVICE

This is to certify that on the 12<sup>th</sup> day of February, 2007, a copy of the foregoing document was mailed to all parties herein or their attorneys of record.

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