

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel. GENERAL  
MOTORS CORPORATION,

Appellee,

v.

INDUSTRIAL COMMISSION OF OHIO  
and CHESTER STEPHAN, et al.,

Appellants.

Case No. 07-0210

On Appeal from the Franklin  
County Court of Appeals  
Tenth Appellate District  
(App. No. 06AP-373)

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MEMORANDUM IN OPPOSITION TO JURISDICTION

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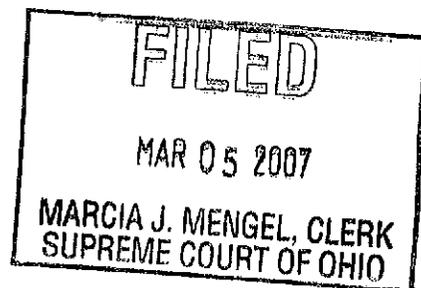


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## JURISDICTIONAL STATEMENT

This appeal presents no issue of such great public or general interest that it warrants the Court's exercise of its discretionary jurisdiction.

First, there is no significant jurisprudential question that requires this Court's review. On the contrary, the basic issue presented by appellants is whether the language of R.C. 4123.56(A), which grants an employer a set-off against workers' compensation benefits for certain insurance benefits that are "paid" by the employer, is actually limited to insurance benefits that are "received immediately" by the employee. That issue is of little significance to Ohio law as a whole.

Appellants, the Industrial Commission of Ohio and Chester Stephan, argue that the portion of insurance benefits that appellee General Motors Corporation sent to government taxing authorities on Mr. Stephan's behalf, as required by state and federal tax withholding laws, cannot be set off against his workers' compensation benefits, despite the express language of R.C. 4123.56(A) and regardless of the fact that this (1) requires General Motors to pay more than the statutory maximum amount of workers' compensation benefits, and (2) allows the employee to recover more than the maximum amount of benefits by requesting a tax refund or credit. Appellants argue that the portion of insurance benefits sent to taxing authorities was not "paid" by General Motors, as required for a set-off under the language of the statute. By that reasoning, an employer who agrees to "pay" an employee a specified salary could be sued by the employee for breach of contract if it obeyed the law by withholding taxes and forwarding them to government authorities. There is no reason for the Court to consider appellants' legal theory.

Second, the issue presented by appellants in this case affects only a tiny number of Ohio citizens: employees who are injured while working in the course of their employment for employers, and have workers' compensation claims that are not certified immediately by their employers, and receive employer-funded wage-replacement insurance benefits while their workers' compensation claims are pending, and do not have their workers' compensation claims determined before the end of the taxable year in which their injury occurred, and do not request a refund or credit of the taxes that were withheld from the insurance benefits while the workers' compensation claim was pending. Appellants' warnings that "hundreds of thousands" of workers will be directly affected by this case (Stephan Mem. in Support, at 1) are wildly exaggerated.

In fact, the third reason this Court should decline jurisdiction is that this issue has never before arisen in Ohio courts and likely never will again. There have been no previous appellate decisions, and thus no conflicts between the districts of the Ohio Courts of Appeals, on this issue or on any related issue. That is not surprising because the General Assembly has already given the answer to the question presented here in R.C. 4123.56(A), and both appellants admitted in their briefs below that the statutory language is clear and unambiguous. There is no need for the Court to spend its limited time and resources on the issue raised by this appeal.

Fourth, both appellants essentially argue that the Court should accept review in this case because the Court of Appeals' decision is wrong, but the Court's constitutional discretionary jurisdiction does not extend to "error" appeals. Even if it did, the Court of Appeals committed no errors of fact or law and its decision is correct. It is telling that

most of appellants' arguments are not supported by citations to any legal authorities whatsoever. This includes their novel propositions of law, *e.g.*, that mandamus relief is not available whenever the inferior tribunal relied upon statutory language to resolve a dispute; that the liberal construction afforded workers' compensation statutes authorizes a court to ignore a statutory set-off that reduces benefits; and that the reference in R.C. 4123.56(A) to insurance benefits "paid" by an employer actually means insurance benefits "received immediately" by the employee. The Court of Appeals properly followed the statutory language.

Fifth, and finally, the ruling of the Court of Appeals below does not implicate any generalized concerns about fundamental fairness and justice. Appellants want this Court to adopt a rule that would have the effect of requiring employers either to violate federal and state tax withholding statutes by sending all insurance benefits directly to the employee; or to pay more than the statutory maximum amount of workers' compensation benefits in order to cover the employee's tax payments; or discontinue employer-funded wage-replacement insurance benefits altogether, in which case workers will have no benefits of any kind until and unless their workers' compensation claims are approved. Appellants' sole justification for such a rule is that it would spare a small number of injured employees from delays and inconveniences in obtaining refunds or credits for overpaid taxes on their insurance benefits – the same delays and inconveniences that any other worker faces in obtaining refunds or credits for overpaid taxes on ordinary income.

In short, there is no good reason for the Court to exercise its discretionary jurisdiction and review the decision of the Court of Appeals in this matter.

## STATEMENT OF THE CASE AND FACTS

Only one legal issue was considered by the lower courts in this case: whether the portion of an employee's wage replacement insurance benefits that was forwarded by the employer to government taxing authorities was "paid" by the employer under the set-off provisions of R.C. 4123.56(A). Appellee-relator General Motors Corporation provided insurance benefits to appellant Chester Stephan through an employer-funded insurance program while his workers' compensation claim was pending. When Mr. Stephan's claim was later approved for the same lost wages that had been compensated by the insurance, General Motors paid him the difference between the amount of insurance benefits it had paid and the slightly higher amount of workers' compensation benefits awarded for the same time period, as required by R.C. 4123.56(A). Because workers' compensation benefits are not taxed, Mr. Stephan could request a refund or credit on his income tax returns for the taxes withheld from the insurance benefits.

Instead of requesting a tax refund or credit, Mr. Stephan filed a request with appellant-respondent Industrial Commission of Ohio for additional compensation. He argued that the portion of the insurance benefits that General Motors had sent to the taxing authorities on his behalf should not have been set off against his workers' compensation benefits. A District Hearing Officer for the Industrial Commission agreed with Mr. Stephan, but his ruling was vacated by the Commission's Staff Hearing Officer, who agreed with General Motors that it "paid" the full amount of the insurance benefits when it sent most of the benefits directly to Mr. Stephan and sent the remaining portion to the taxing authorities on his behalf.

Mr. Stephan appealed to the Industrial Commission, which changed course again and decided that only the portion of the insurance benefits that had been sent directly to Mr. Stephan could be set-off against his workers' compensation benefits. The Commission's written Order failed to recognize that General Motors would thereby pay a total amount of benefits that exceeds the statutory maximum, and that Mr. Stephan would receive a total amount of benefits that exceeds the statutory maximum once he obtained a refund or credit for the taxes that General Motors sent to the taxing authorities. The Commission did not explain its ruling, and it cited no legal authority. General Motors' Request for Reconsideration was summarily denied.

Because the Commission's decision was related to the "extent of disability," *i.e.*, the compensation to be paid in an allowed claim, no statutory appeal was available, and General Motors initiated a mandamus action. R.C. 4123.519(A). The mandamus action was assigned to Common Pleas Judge Lisa Sadler, who reversed the Commission's decision and granted a writ to General Motors. Judge Sadler held that "[t]here is no question that the Commission's Order would result in actual receipt by Stephan of aggregate TTD benefits in an amount in excess of that set forth in R.C. 4123.56(A)" and that the Order would "force" employers "to pay more TTD benefits to a claimant than is expressly prescribed by statute." Judge Sadler signed her Decision and Entry Granting Writ of Mandamus on June 30, 2003, her last day as a Common Pleas judge, but it was not entered by the clerk until July 1, 2003, her first day as a Court of Appeals judge. The Court of Appeals subsequently held that Judge Sadler's judgment entry was void and ordered the parties to obtain "a determination on the merits" from her successor, Judge Guy Reece.

On remand, Judge Reece considered the same undisputed facts, the same evidentiary record, and the same statutory provision that Judge Sadler had considered when she granted the writ of mandamus, but he nevertheless reached the opposite result and denied the writ. He concluded that R.C. 4123.56(A) "does not specify whether the amount [of insurance benefits] to be offset [against the workers' compensation benefits] is the net amount received or the gross amount paid" – even though the statute itself specifically refers to the amount "paid."

The Court of Appeals found that "the language of R.C. 4123.56(A) is clear and unambiguous" and reversed Judge Reece's ruling:

As written, the statute clearly provides that the setoff is based upon the amount "paid or payable" by the employer . . . . As a court, we are not empowered to substitute "received" and "receivable" for the statutory terms "paid" and "payable" . . . . That is a matter for the General Assembly.

(*Id.*, at 8-9.) The Court of Appeals acknowledged that R.C. 4123.95 requires a liberal construction of workers' compensation statutes in favor of employees, but in this case "neither [the Industrial Commission nor Mr. Stephan] considers R.C. 4123.56 ambiguous." (*Id.*, at 9, fn. 7.) Finding "no need for statutory construction of a clear and unambiguous statute," the Court ordered the trial court to issue a writ of mandamus. (*Id.*, at 9, 12.)

## ARGUMENT

### I. Response to Proposition of Law No. 1 of Appellant Industrial Commission of Ohio:

General Motors is entitled to a writ of mandamus to enforce the clear legal right to a set-off for insurance benefits "paid" by employers, as provided by the unambiguous language of R.C. 4123.56(A).

In its first Proposition of Law, the Industrial Commission argues that a writ of mandamus is not available if the relator's legal rights depend upon "the interpretation of a statute" – "[e]ven if the statute itself is clear and unambiguous." (Industrial Commission Mem. in Support, at 7, 8.) The Industrial Commission does not cite any legal authorities in support of that contention, because there are none. Instead, it reasons that mandamus requires "a clear legal right to the requested relief," and that "no one has a legal right to a particular interpretation" of a statute. (*Id.*, at 7-8.)

The Industrial Commission misunderstands the mandamus remedy generally and the specific relief sought in this action. General Motors does not seek to vindicate the legal right to obtain judicial interpretations of statutes; it seeks to enforce the legal right to a statutory set-off that the General Assembly expressly provided in R.C. 4123.56(A). The Industrial Commission's Proposition of Law would prohibit relief in mandamus involving any legal right that is addressed by any statute, "[e]ven if [the statute] is clear and unambiguous." (Industrial Commission Mem. in Support, at 8.) Ohio courts have long recognized that mandamus relief is appropriate whenever the relator has "a clear legal right" and the inferior tribunal has a corresponding "legal duty" to provide the relief sought, as long as the relator has no adequate remedy at law. *State ex rel. Pressley v. Industrial Commission* (1967), 11 Ohio St.2d 141. Mandamus has never been restricted to cases involving non-statutory legal rights.

Furthermore, this case does not involve judicial construction of a statute. The Court of Appeals held that the language of R.C. 4123.56(A) is "clear and unambiguous" and requires no interpretation. (Opinion, *supra*, at 9.) The Industrial Commission conceded in the lower courts that this statute is unambiguous, and although it has now

apparently changed its mind, it does not challenge the Court of Appeals' holding on that point. The statute provides in pertinent part:

[I]n the case of temporary disability, an employee shall receive sixty-six and two-thirds per cent of the employee's average weekly wage . . . not to exceed a maximum amount of weekly compensation which is equal to the statewide average weekly wage . . . .

\* \* \* \*

If any compensation under this section has been paid for the same period or periods for which temporary nonoccupational accident and sickness insurance is or has been paid pursuant to an insurance policy or program to which the employer has made the entire contribution or payment or under a nonoccupational accident and sickness program fully funded by the employer, compensation paid under this section for the period or periods shall be paid only to the extent by which the payment or payments exceeds the amount of nonoccupational insurance or program paid or payable.

R.C. 4123.56(A) (emphasis added).

This statutory language gives an employer like General Motors the clear legal right to set off the amount of insurance benefits that the employer "paid" against the amount of workers' compensation benefits the employer subsequently owed to the employee, so that the employee will not receive more than the statutory maximum amount of benefits. The Court of Appeals properly held that General Motors had a clear legal right to set off all of the insurance benefits it paid for Mr. Stephan's injury against the workers' compensation benefits he was awarded for the injury, and that the Industrial Commission had a clear legal duty to comply with this statutory mandate. It is simply untrue that General Motors "is not asking the Commission to perform any act." (Industrial Commission Mem. in Support, at 8.) General Motors seeks a writ of

mandamus to compel the Industrial Commission to perform its legal duty and apply the statutory set-off to Mr. Stephan's workers' compensation award.

The Industrial Commission makes an additional argument here even though it is unrelated to its first Proposition of Law: that General Motors is not entitled to a writ in mandamus because it purportedly has "an adequate remedy at law." (*Id.*) But the Industrial Commission does not challenge – or even mention – the Court of Appeals' holding that General Motors had no right to appeal the Commission's Order to the Court of Common Pleas and had no other remedy at law. (Opinion, *supra*, at 6-7.) The Court of Common Pleas had jurisdiction over this mandamus action pursuant to R.C. 2731.02, see *State ex rel. Ross v. Industrial Commission* (1999), 84 Ohio St.3d 364, and its ruling does not require this Court's review.

II. Response to Proposition of Law No. 2 of Appellant Industrial Commission of Ohio:

The liberal construction afforded workers' compensation statutes does not authorize the Industrial Commission to increase workers' benefits by ignoring the unambiguous set-off provisions of R.C. 4123.56(A).

In its second Proposition of Law, the Industrial Commission argues that the Court of Appeals erred by failing to "liberally construe" the set-off statute, R.C. 4123.56(A). It believes that the Court was obligated to ignore the statutory set-off for the benefits that General Motors paid to taxing authorities because the set-off would decrease the amount of his workers' compensation benefits. (Industrial Commission Mem. in Support, at 8.) The Industrial Commission's one-paragraph argument in support of this Proposition of Law cites no legal authority whatsoever suggesting that the set-off mandated by R.C. 4123.56(A) can be ignored in order to give a claimant more than the statutory maximum amount of workers' compensation benefits.

The Court of Appeals properly rejected this argument because "R.C. 4123.95 can require liberal construction of a statute only where the statute is ambiguous and requires construction," and the Industrial Commission had already conceded that R.C. 4123.56(A) is not ambiguous. (Opinion, *supra*, at 9, fn. 7.) Instead of challenging the Court of Appeals' ruling on legal grounds, the Industrial Commission now takes a contradictory position. *Compare* Brief of Industrial Commission in the Court of Appeals, at 2 (the language of R.C. 4123.56(A) is "clear") with Industrial Commission Mem. in Support, at 8 (the "language of R.C. 4123.56(A) is hardly clear"). The Court of Appeals had no opportunity to consider the Industrial Commission's new argument, and it should not be reversed on that ground. The Industrial Commission was right the first time; the statute uses the word "paid," not the word "received," and there is no ambiguity requiring liberal construction. The decision of the Court of Appeals should be affirmed.

III. Response to Proposition of Law No. 3 of Appellant Industrial Commission of Ohio:

General Motors did not "indirectly tax" Mr. Stephan's workers' compensation benefits or diminish the full amount of benefits that he is entitled to receive.

In its third Proposition of Law, the Industrial Commission argues that Mr. Stephan's workers' compensation benefits were "indirectly taxed," and thereby unlawfully "diminished," because the portion of the insurance benefits that was forwarded to government taxing authorities was subsequently set off against his workers' compensation award, and he has to request a tax refund or credit to obtain it. (Industrial Commission Mem. in Support, at 9-10.) This did not "diminish" his benefits, and the Industrial Commission does not cite a single legal authority that supports its

contention. The Industrial Commission is asking this Court to decide a question of public policy that has already been addressed and decided by the General Assembly.

The Industrial Commission argues, first, that Mr. Stephan would not be unjustly enriched if the set-off for this portion of his insurance benefits is denied. (Industrial Commission Mem. in Support, at 9.) However, it fails to acknowledge the obvious fact that Mr. Stephan would then receive more than the statutory maximum amount of workers' compensation benefits, *i.e.*, no set-off would be made for insurance benefits that were forwarded to taxing authorities, yet Mr. Stephan could still obtain a refund or credit for those tax payments. As a result, Mr. Stephan would be overcompensated unless he voluntarily chose not to claim a refund or credit.

Second, the Industrial Commission argues that Mr. Stephan has somehow been "double-taxed" because workers' compensation benefits "are supposed to represent after-tax earnings," and his full compensation will be delayed until he obtains a refund or credit of the payments to the taxing authorities. (Industrial Commission Mem. in Support, at 9.) This is no different than the situation facing any employee who has more income taxes withheld from earnings than are actually owed and must request a refund or credit. There is no "double-taxation" in these circumstances.

Third, the Industrial Commission insists that even if Mr. Stephan would be unjustly enriched and recover extra benefits under its propositions of law, this situation "is of G.M.'s, and not Stephan's making" in that "G.M. could have escrowed the potential taxes" or made some other unspecified "arrangements." (Industrial Commission Mem. in Support, at 10.) The Industrial Commission's premise is incorrect; General Motors is required by state and federal law to withhold taxes from taxable income, including

payments by employer-funded insurance plans for lost wages, and no other "arrangements" are acceptable to the state or federal governments. See 26 U.S.C. 105(A); 26 U.S.C. 3042(a)(1); R.C. 5747.01; R.C. 5747.06. According to the Industrial Commission, employers who voluntarily provide wage-replacement insurance benefits as a convenience to their employees must either violate state and federal tax withholding laws or pay more than the statutory maximum amount of workers' compensation benefits. Nothing in Ohio law subjects employers to that type of coercion; if it did, employers would have a powerful incentive to discontinue employer-funded insurance benefits altogether.

Accordingly, General Motors did not "indirectly tax" Mr. Stephan or diminish the amount of workers' compensation benefits he is entitled to receive. The Court of Appeals properly granted relief in mandamus in these circumstances.

IV. Response to Proposition of Law of Appellant Chester Stephan:

An employer does not act "unlawfully" when it complies with mandatory federal and state tax withholding laws that require employers to forward a portion of employees' wage-replacement insurance benefits to taxing authorities.

In his only Proposition of Law, appellant Chester Stephan contends that "[t]he Industrial Commission did not abuse its discretion by ordering GM to pay the full amount of temporary total disability benefits due without unlawfully superimposed deductions." (Stephan Mem. in Support, at 5.) This is disingenuous for many reasons, including (1) the Commission's rulings on issues of law are not subject to its "discretion"; (2) General Motors did pay "the full amount of temporary total disability benefits" that is permitted by Ohio workers' compensation statutes; and (3) the portion of the insurance benefits that was forwarded to the taxing authorities was not "unlawfully deducted" from

Mr. Stephan's insurance benefits, given the mandatory tax withholding statutes, or from his workers' compensation benefits, given the mandatory set-off provisions in R.C. 4123.56(A).

This Court should summarily reject Mr. Stephan's contention that the Commission exercised a purely "discretionary function" when it held as a matter of law that the set-off provisions of R.C. 4123.56(A) do not include portions of insurance benefits that are forwarded to taxing authorities. (*Id.*, at 6.) His Memorandum in this Court completely ignores the reason that the Court of Appeals gave for rejecting his contention: "the commission did not make a factual determination" in this case, it addressed "a question of law, not fact" and thus had no discretion. (Opinion, *supra*, at 8.) *See State ex. rel. Industrial Commission* (1980), 64 Ohio St.2d 53, 55 (the abuse-of-discretion standard of review applies only to Ohio Industrial Commission factual determinations). All parties agreed on the relevant facts in the present case. The Industrial Commission does not have "discretion" to make Ohio law; it has a duty to comply with the law. General Motors has clear legal rights to the statutory set-off described in R.C. 4123.56(A), and mandamus is thus the appropriate remedy to require the Commission to perform its clear legal duty under that statute.

Mr. Stephan argues, next, that relief is precluded in this case because R.C. 4123.56(A) requires that "[o]ffset of the compensation shall be made only upon the prior order of the bureau or industrial commission or agreement of the claimant," and none of those things have occurred. (Stephan Mem. in Support, at 7.) But that is precisely the point; General Motors cannot take the set-off, despite the clear statutory

language, until the Commission enters an appropriate set-off order, and its refusal to perform that clear legal duty entitles General Motors to a writ of mandamus.

Mr. Stephan also claims that there is "nothing in the record" showing that he can obtain a refund of the portion of insurance benefits that was forwarded to the taxing authorities. (Stephan Mem. in Support, at 8.) But it is undisputed that the taxes withheld by General Motors for insurance benefits were no longer owed by Mr. Stephan after his workers' compensation claim was approved and substituted for the insurance coverage, and simple logic suggests that tax payments that were not ultimately owed by Mr. Stephan will be refunded or credited. There is no possible "tax situation" that would require Mr. Stephan to pay taxes on non-taxable income. (See *id.*, at 9.)

Mr. Stephan argues, finally, that General Motors should be required to return to an accounting system it used approximately a decade ago and escrow taxes that are withheld from employees' insurance benefits until their workers' compensation claims are determined. (*Id.*) This ignores the undisputed fact that federal and state law impose mandatory withholding obligations on employers who pay wage-replacement insurance benefits to employees. Under current law, General Motors must forward the taxes it withholds for insurance benefits to the taxing authorities for each employee whose workers' compensation claim is still pending at the end of the tax year; only social security taxes are exempted from this requirement. General Motors can no longer escrow tax payments; an employee must request a tax refund or credit if the workers' compensation claim is not approved until the following year.

In addition, none of this is relevant to the determinative issues in this proceeding. General Motors has a clear legal right to the set-off granted in R.C. 4123.56(A); the

Industrial Commission of Ohio has a clear legal duty to follow that statutory mandate; and there is no adequate remedy at law available in these circumstances. Accordingly, the Court of Appeals correctly found that General Motors is entitled to a writ in mandamus, and there is no reason for this Court to review its ruling.

### CONCLUSION

This case raises no issues of public or great general interest that warrant the exercise of the Court's discretionary jurisdiction. The Ohio bench and bar do not require the Court's legal guidance in this instance because the ruling of the Court of Appeals simply applies the clear statutory command of R.C. 4123.56(A) to undisputed facts that very few employees will ever encounter. There is no reason for the Court to expend its time and resources on appellants' contention that General Motors should pay more than the statutory maximum amount of workers' compensation benefits in order to spare Mr. Stephan the inconvenience of requesting a tax refund or credit when he files his income tax returns. The Court should decline jurisdiction over this appeal.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

This is to certify that on this 5th day of March, 2007, the below-signed attorney served the above Memorandum in Opposition to Jurisdiction via first-class U.S. mail, postage prepaid, upon:

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