

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel.,  
GREGORY T. HOWARD

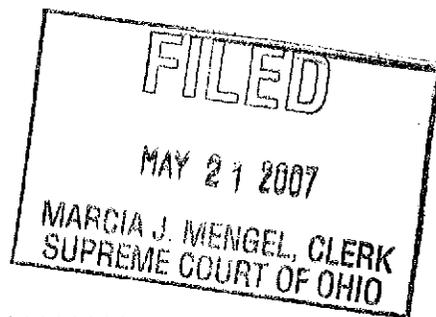
Appellant,

-vs-

SEAWAY FOOD TOWN, INC., et al.,

Appellees.

Case No. 03-1572  
Trial Court Case No. 97AP-860



\*\*\*\*\*

APPLICATION FOR LEAVE TO FILE THE ATTACHED DOCUMENTATION IN  
SUPPORT OF VALID COMPLAINT IN MANDAMUS AND/OR IN PROCEDENDO  
WITH AFFIDAVIT AND PRAECIPE IN THIS COURT, *INSTANTER*

\*\*\*\*\*

On September 24, 2004, this Court declared Gregory T. Howard, pro-se, a vexatious litigator pursuant to S. Ct. Prac. R. XIV, Section 5(B). Accordingly, Howard must obtain leave of this Court to institute any proceeding, continue any proceeding he instituted, or make any application in this Court. The time for filing an appeal from Judge Bender's January 11, 2006 orders has long ago expired.

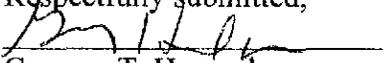
Based upon the factual or legal basis, the facts or laws for all of the claims Appellant has made or raised herein and incorporated by reference, Appellant respectfully requests this Honorable Court to permit him leave of Court to file the attached Documentation in Support of his valid Ohio Civil Rule 8, S. Ct. Prac. R. X Complaint in Mandamus and/or in Procedendo with Affidavit and Praccipe in this Court, *Instanter*, against the multiple named Respondents in that action, on the reasonable grounds outlined below.

Under S. Ct. Prac. R. X(7), counsel whether pro-se or not is permitted to present evidence "to facilitate the consideration and disposition of original actions\*\*\*." As evidenced by the Appellant's letter dated May 17, 2006, Appellant served Eastman & Smith, Ltd.-Attorney Dixon, the Industrial Commission of Ohio-Toledo Hearing Administrator, and the Ohio Bureau of Workers' Compensation with Transcript of Proceeding taken from contempt hearing held against him on November 29, 2005, so as to justify or to be construed as "an agreed statement of facts to the Supreme Court of Ohio," pursuant to S. Ct. Prac. R. X(7) .

Moreover, this is reasonable grounds for permitting Appellant leave of Court to file the attached Documentation in Support of his valid Ohio Civil Rule 8, S. Ct. Prac. R. X Complaint in Mandamus and/or in Procedendo with Affidavit and Praeceptum in this Court, *Instantly*, against the multiple named Respondents in that action as well.

**WHEREFORE**, for all of the foregoing reasons Appellant respectfully requests that this Court permit him to file instantly the attached Documentation in Support of his valid Ohio Civil Rule 8, S. Ct. Prac. R. X Complaint in Mandamus and/or in Procedendo with Affidavit and Praeceptum in this Court, *Instantly*, against the multiple named Respondents in that action, pursuant to R.C. Chapter 2731 and other applicable legal provisions.

Respectfully submitted,

  
Gregory T. Howard  
P.O. Box 3096  
Toledo, Ohio 43607-0096  
Telephone: (419) 450-3408

Relator-Appellant, Pro-se

PROOF OF SERVICE

This is to certify that a copy of the foregoing of Gregory T. Howard was sent via ordinary U.S. Mail this 21<sup>st</sup> day of May, 2007 to:

Eastman & Smith, Ltd.  
C/O Thomas A. Dixon, Esq.  
One Seagate, 24<sup>th</sup> Floor  
Toledo, Ohio 43699-0032

Ohio Attorney General Office  
Shawn M. Wollam, Esq.  
150 East Gay Street, 22<sup>nd</sup> Floor  
Columbus, Ohio 43215

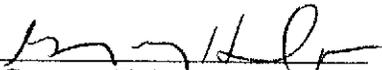
Governor Ted Strickland  
77 High Street, 30<sup>th</sup> Floor  
Columbus, Ohio 43215-6117

The Ohio Attorney General Chief of  
Chief Counsel Staff-Atty Carney  
State Office Tower  
30 East Broad Street, 17<sup>th</sup> Floor  
Columbus, Ohio 43266-0410

The Federal Trade Commission:  
Privacy-Steering-Committee  
Federal-Trade-Commission  
600-Pennsylvania-Avenue,N.W.  
Washington,DC-20580

Judge John F. Bender  
Fax: (614) 462-2462

Attn: Deputy Director, Office of the Executive Director  
Re: Eastman & Smith, et al.  
State of Ohio Office of the Attorney General Complaint #: 327061 & 330421  
Federal Trade Commission Complaint # 10010756 & 10299071  
Comptroller of the Currency #685430

  
Gregory T. Howard  
Appellant-Claimant, pro-se

Wednesday, May 17, 2006

Industrial Commission of Ohio  
Toledo Hearing Administrator  
One Government Center, 15<sup>th</sup> Floor  
Toledo, Ohio 43604

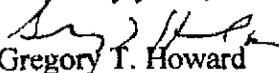
Re: Gregory T. Howard v. Seaway Foodtown, Inc.  
BWC Claim No. L-246280-22, 882992-22, & 800268-22  
Date of Injury: 11/01/1993, 04/18/1985, 10/26/1982  
**NOTICE OF FILING TRANSCRIPT OF 11/2005**

Dear Toledo Hearing Administrator:

Attached as evidence that if an employer goes away, that it becomes the responsibility of the Workers' Compensation fund to pay any benefits to or on behalf of the Claimant is a transcript from the hearing held on November 29, 2005 before the Supreme Court of Ohio. (See, Transcript @ 12:4). Therefore, April 21, 2006-C-86 Motion for Change of Coverage and supporting evidence of Seaway Food Town no longer is existence and that Spartan is not an employer for the injured worker with supporting documentation filed herein must be granted as a matter of case law.

If you require additional information or details, please let me know. I request that the pending motions, requests, or applications be reviewed or otherwise disposed of forthwith. Thank-you for your much-anticipated cooperation in this matter.

Very truly yours,

  
Gregory T. Howard  
P.O. Box 3096  
Toledo, Ohio 43607-0096  
Telephone: (419) 450-3408

Enclosures

cc:

Ohio Bureau of Workers' Compensation (w/enc.) 866-457-0994 ✓  
Thomas A. Dixon, Esq. (w/enc.) 419-247-1777 —

INDUSTRIAL COMMISSION  
OF OHIO  
2006 MAY 17 P 2:39  
TOLEDO REGIONAL OFFICE

TOL 05/17/2006

**In The Matter Of:**

*Gregory T. Howard v.  
Seaway Food Town, Inc.*

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*Hearing  
November 30, 2005*

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*McGinnis & Associates, Inc.  
Video & Court Reporting by Professionals  
175 South Third Street  
Suite 540  
Columbus, OH USA 43215-5134  
(614) 431-1344 or (800) 498-2451*

*Original File 112905SC.TXT, 26 Pages  
Min-U-Script® File ID: 0804323496*

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OF OHIO

**Word Index included with this Min-U-Script®**

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(1) IN THE SUPREME COURT OF OHIO  
 (2)  
 (3) State of Ohio, ex rel. )  
 Gregory T. Howard, )  
 (4) Appellant. )  
 (5) vs. ) Case No. 03-1572  
 (6) Seaway Food Town, Inc., )  
 (7) et al., )  
 (8) Appellees. )  
 (9)  
 (10) Ohio Judicial Center  
 First Floor Courtroom  
 (11) 65 South Front Street  
 Columbus, Ohio 43215  
 (12) Tuesday, November 30, 2005  
 (13) Met, pursuant to assignment, at  
 11:46 o'clock a.m.

BEFORE:

(15) Chief Justice Thomas J. Moyer  
 Justice Terrence O'Donnell  
 (16) Justice Evelyn Lundberg Stratton  
 Justice Alice Robie Rasmick  
 (17) Justice Paul E. Pfeiffer  
 Justice Maureen O'Connor  
 (18) Justice Judith Ann Lanzinger

APPEARANCES:

(21) ON BEHALF OF THE APPELLANT:  
 Gregory T. Howard, Pro Se  
 (22)  
 ON BEHALF OF THE APPELLEE INDUSTRIAL  
 (23) COMMISSION, STATE OF OHIO:  
 James A. Barnes, Esq.  
 (24)  
 (25)

PROCEEDINGS

(1) (2)  
 (3) Tuesday, November 30, 2005  
 (4) Morning Session  
 (5)

(6) **CHIEF JUSTICE MOYER:** Mr. Howard, you may  
 (7) proceed. You have 15 minutes and you can divide  
 (8) your time as you wish.

(9) I will remind you in view of the recent  
 (10) filings that you have made, that the purpose for  
 (11) your appearance here is to — is to discuss with  
 (12) you how you intend to respond to the contempt  
 (13) order that the Court — that the Court has made  
 (14) for nonpayment of about — of over \$1,300 in  
 (15) attorney's fees and costs.

(16) **MR. HOWARD:** May it please the Court. I  
 (17) commend you guys on such a great job of being  
 (18) patient and listening to a lot of different cases  
 (19) and really putting a lot of time in it.

(20) I would like to also reserve two to three  
 (21) minutes of — to make acknowledgements, and would  
 (22) also request —

(23) **CHIEF JUSTICE MOYER:** There's a clock on  
 (24) the — so watch your time on the clock.

(25) **MR. HOWARD:** Yes, sir.

(1) **CHIEF JUSTICE MOYER:** When the white  
 (2) light comes on, that means you have two minutes  
 (3) remaining.

(4) **MR. HOWARD:** Okay.

(5) **CHIEF JUSTICE MOYER:** The red light means  
 (6) your time is expired.

(7) **MR. HOWARD:** Okay. Thank you, your  
 (8) Honor.

(9) And I — I would ask the Court to reserve  
 (10) their questions until after I have had the  
 (11) Application for Mandamus that was submitted to the  
 (12) Clerk's office today.

(13) And also I just want to make — more or  
 (14) less like a disclaimer. I may not look at you  
 (15) when I read it. It's only three pages and I  
 (16) don't think it would take all of the 15 minutes.

(17) First of all, it's — it's an Oral  
 (18) Application for a Writ of Mandamus to be read by  
 (19) the Appellant. And it starts out under "Statement  
 (20) of the Facts". Appellant reincorporates all of  
 (21) his updated Memorandum in Response to the Motion  
 (22) to initiate contempt proceedings as though the  
 (23) same were fully rewritten herein. Pursuant to the  
 (24) provisions of Article IV, Section 2(B)(1)(b) of  
 (25) the Ohio Constitution...

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 OF OHIO  
 INDUSTRIAL COMMISSION

(1) application for leave that this Court issue a writ  
(2) of mandamus ordering the Tenth District Court of  
(3) Appeals to vacate its August 26th, 2003 decision  
(4) denying his Motion for Leave to file an attached  
(5) Memorandum in Opposition instanter and to issue an  
(6) order in the Appellant's favor pursuant to  
(7) RC 2705.02(A).

(8) Under "Law and Argument", "In order for a  
(9) writ of mandamus to issue, a relator must  
(10) demonstrate that he or she has a clear legal right  
(11) to the relief prayed for; that the respondents are  
(12) under corresponding clear, legal duty to perform  
(13) the requested acts; and that the relator has no  
(14) claim and adequate remedy — legal remedy."

(15) That's under State Berger — State  
(16) ex rel. Berger v. Mon — Mon — McMonagle, this  
(17) Court's decision, 6 Ohio St. 3d 28.

(18) Mandamus action. "Mandamus is an  
(19) appropriate remedy where no statutory right is  
(20) provided to correct an abuse of discretion in an  
(21) administrative proceeding."

(22) That's State ex rel. Breno versus  
(23) Industrial Commission (1973), 34 Ohio St.2d twen-  
(24) — 227.

(25) "Because this Court has determined that

(1) the Case 97AP-860 and I attached — for the  
(2) Court's review.

(3) Accordingly, the Appellant respectfully  
(4) asks this Court to issue a writ of mandamus  
(5) reversing the Court of Appeals judgment denying  
(6) the right for leave to — to file his responsive  
(7) pleading instanter pursuant to Article IV,  
(8) Section 2 (B)(1)(b) of the Ohio Constitution and  
(9) other applicable legal provisions."

(10) I'll — I would also ask the Court to  
(11) excuse me from these legal proc — proceedings  
(12) because my answer to every question put to —  
(13) to — to me will be as follows:

(14) My answer will be: Appellant asserts the  
(15) Fifth Amendment of the United States Constitution  
(16) because of ex po — post facto I cannot be a  
(17) witness against myself as to a crime of failing to  
(18) comply with either the Court's order assessing  
(19) legal fees against Appellant, this Court's  
(20) declaration of the Appellant being a vexatious  
(21) litigator under the Court's rules in September  
(22) 2004, subsequently finding appellant to be in  
(23) contempt of Court, and ordering appellant to  
(24) appear in person without legal representation at  
(25) its November 29th, 2005 oral argument. See the

(1) the Appellant does not have a direct appeal from  
(2) the Court of Appeals August 26th, 2003  
(3) determination in the present case, a mandamus —  
(4) mandamus remedy — (see Article IV,  
(5) Section 2(B)(1) of the Ohio Constitution) —  
(6) Article IV, Section 2(B)(1)(b) of the Ohio  
(7) Constitution, which in material part provides:

(8) (b)(1). "The Supreme Court shall have original  
(9) jurisdiction in the following..."

(10) Under (b), on Subsection (b), this is  
(11) Mandamus. "In the present case, pursuant to the  
(12) Tenth District Court of Appeals Local 6 — 6 —  
(13) Local Rule 6(A), Appellant had a clear legal right  
(14) to file a response within ten days after service  
(15) of Appellee's motion and the Court of Appeals was  
(16) under a corresponding clear, legal duty to make a  
(17) determination upon the Appellee's motion whether  
(18) or not a response was filed. Appellant asserts  
(19) that substantial evidence — that there is  
(20) substantial evidence of inappropriateness was  
(21) demonstrated by Appellant's articulation that the  
(22) Court of Appeals decision of August 26, 2003 was  
(23) inappropriate and was a clear abuse of  
(24) discretion."

(25) I attached a copy of the docket entry for

(1) Sixth Amendment of the United States Constitution.

(2) A crime is defined — and this is Black's  
(3) dictionary — is defined as "a conduct that is  
(4) prohibited and has a specific punishment  
(5) prescribed by public law."

(6) Therefore, Appellant believes the Fifth  
(7) Amendment of the United States Constitution in  
(8) this action. And I also cite a case, see In Re:  
(9) Oliver 333 U.S. 257, 275.

(10) Basically, that's where my position is on  
(11) this — this matter. Also, I ask for that  
(12) three-minute reserve for acknowledgement. First  
(13) of all, I would like to acknowledge the Lord Jesus  
(14) Christ. My family, Mr. Brakowski, they throw me  
(15) down here. Also, Judge Lanzinger. I mean, in my  
(16) prior case, I had her in my prior case and my wife  
(17) in her absence. Also I would acknowledge  
(18) church family.

(19) I appreciate your time and I appreciate  
(20) your efforts in listening to me. And I — I would  
(21) ask that you take a serious look at the documents  
(22) that are in the file, and I would appreciate a —  
(23) a response.

(24) CHIEF JUSTICE MOYER: Mr Howard, let me  
(25) be sure that you have an opportunity to tell us

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(1) why it is that you have not paid the \$1,322,  
(2) essentially, that the Court has ordered you to pay  
(3) as attorney's fees and costs. That's why you're  
(4) here. And I want to make sure you understand that  
(5) you're in contempt of — of two Court orders.

(6) The Court has the authority to enter  
(7) sanctions which can be incarceration. We don't  
(8) like to do that. We've done it. We don't like to  
(9) do it. And so I want to give you an  
(10) opportunity — what you read to us doesn't speak  
(11) to the reason that your rather — I'd rather have  
(12) your suggestion as to how you're going to — how  
(13) you're going to comply with the two Court orders  
(14) that — that have assessed you the costs and —  
(15) and attorney's fees.

(16) MR. HOWARD: Your Honor, if I could go  
(17) back, I believe it was my responsive pleading to  
(18) the — to the initial contempt proceeding, there  
(19) is a case this Court's case, Pugh versus Pugh, I  
(20) don't remember the direct citation, but a person's  
(21) inability to pay their costs relieves them of  
(22) their responsibility of paying the costs.

(23) I did make a — a \$1 attempt toward it.  
(24) I don't know. I don't have the funds to — I am  
(25) actually indigent. And I got hurt at work and I

(1) CHIEF JUSTICE MOYER: Mr. — Mr. — Is it  
(2) Mr. Barnes? You're going to argue, Mr. Barnes?

(3) MR. BARNES: May it please the Court, my  
(4) name is James Barnes, Assistant Attorney General,  
(5) representing the Industrial Commission in these  
(6) proceedings.

(7) As the Chief Justice has — has  
(8) mentioned, the only issue before the Court today  
(9) is Mr. Howard's failure to pay or to follow the  
(10) Court order requiring him to pay attorney's fees  
(11) to both the Industrial Commission and Seaway Food  
(12) Town.

(13) As the Court has also mentioned,  
(14) Mr. Howard has been deemed to be a vexatious  
(15) litigator in a number of courts throughout the  
(16) state, including this Court.

(17) Mr. Howard has filed — has filed 90  
(18) cau- — separate causes of actions throughout the  
(19) State of Ohio. He's — He's filed in a number of  
(20) courts, including the United States Supreme Court,  
(21) of course this Court, the Tenth Appellate District  
(22) Court of Appeals, the Court of Claims, the — the  
(23) Franklin County Common Pleas Court — the Lucas  
(24) County Common Pleas Court.

(25) JUSTICE PFEIFER: Counsel, do they all

(1) haven't been paid for that. I am on Social  
(2) Security disability benefits. I mean, it's  
(3) pretty — rather hard to pay, I think it's \$1,300,  
(4) I mean, over — I mean, given the time, I believe  
(5) I could pay it, but —

(6) CHIEF JUSTICE MOYER: You may want to  
(7) consider proposing to us and to the State  
(8) Industrial Commission and the — the lawyer how  
(9) you — a schedule for how you would pay those  
(10) costs. Your don't have to do it standing there.

(11) If you want to sit down and give it some thought,  
(12) we'll give you some time to — to do that. But  
(13) we'd like to see you — we'd like to see you clear  
(14) the slate on these costs and attorney's fees so  
(15) that we don't have to order you back in.

(16) You — You know you've been declared a  
(17) vexatious litigator so you have a lot of — you  
(18) have a lot of cases that you file, a lot of  
(19) motions and so forth, documents that you file.  
(20) But on this one, we — we've made a determination  
(21) that — that you owe these costs and attorney's  
(22) fees. And so we need to somehow resolve how —  
(23) how you are going to resolve that debt.

(24) MR. HOWARD: A couple minutes, please.  
(25) then.

(1) revolve around a Workers' Comp claim?

(2) MR. BARNES: Yes.

(3) JUSTICE PFEIFER: And all of them around  
(4) the same claim?

(5) MR. BARNES: No. There are — There are  
(6) a number of claims, but a number of those causes  
(7) of actions do overlap and are duplicative, but  
(8) they are — but they are separate actions.

(9) JUSTICE PFEIFER: And so Mr. Howard has  
(10) had a — an unsatisfactory outcome in terms of  
(11) what he believes he's entitled to from, is it the  
(12) employer, or from the Commission? Is it a  
(13) self-insured employer?

(14) MR. BARNES: From both. He's — He's  
(15) filed — he's filed against the employer but also  
(16) is challenging — is challenging the Industrial  
(17) Commission order.

(18) JUSTICE PFEIFER: Is the employer in the  
(19) fund or is it a —

(20) MR. BARNES: I — I think the employer is  
(21) self-insured.

(22) Yeah, self-insured.

(23) JUSTICE RESNICK: Does it — Does it make  
(24) any difference that the employer doesn't exist  
(25) anymore? Are there any Food Towns —

INDUSTRIAL COMMISSION  
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(1) Towns, in existence?

(2) **MR. BARNES:** And I'm not sure, your  
(3) Honor.

But if an employer goes away, then it becomes the responsibility of the Workers' Compensation fund to pay any benefits to or on behalf of the claimant.

**JUSTICE RESNICK:** Okay.

**MR. BARNES:** And Mr. Howard has filed actions both at the Common Pleas Court level challenging a determination regarding his right to participate and also mandamus actions which go to the extent of disability.

**JUSTICE O'CONNOR:** Mis- — Counselor, has Mr. Howard made any overtures or contacted you or anyone representing the State or Industrial Commission in this matter with regard to a settlement, a payment schedule, or any acquiescence to the debt in an attempt to resolve the debt before today?

**MR. BARNES:** No, your Honor. And so we — unfortunately, the Industrial Commission does not believe that Mr. Howard has any intent to pay on the Court's orders.

As he mentioned earlier, he did pay \$1.

And in paying that \$1, it was really a mockery of the system because he paid that \$1 by way of a money order. He got a money order and then it was mailed by certified mail delivery to our office. So it cost him more to get it to us than the amount he paid.

And the — The filings themselves, his many filings throughout the State belie his inability to pay. Again, he's filed 90 separate causes of action. Those actions require filing fees. There are filing fees established by each of those courts.

Our calculation based on the — based on the courts in which those causes of action were filed was \$39,000-plus.

**JUSTICE O'CONNOR:** There's no indigency filings here on his behalf? He's not alleging or filing an affidavit of indigency in any of his pleadings?

**MR. BARNES:** I'm — I don't know. The — But the — If — If he were to pay those costs, it would be \$39,000-plus —

**JUSTICE O'CONNOR:** But you don't know —

**MR. BARNES:** No.

**JUSTICE O'CONNOR:** — whether he is

filing as an indigent? He's represented to us that his source of income is his disability and he is indigent.

**MR. BARNES:** No, we do not. That — That is but one factor to — one factor to look at because you also have to look at the fact that Mr. Howard lives in Toledo.

And each time he makes a filing here in Columbus, whether it's the Court of Claims, the Franklin County Common Pleas Court, or this Court, or the Tenth Appellate District Court of Appeals, he hand delivers those filings. So at a minimum, he's paying costs to make that travel from Toledo to Columbus.

The voluminous documents, pages included in his filings are an indication that he has to bear some cost for copying. He does have the funds to — to copy those documents, to travel, and he's also bearing the cost of paying court reporters. He's paying court reporters to attend Industrial Commission proceedings. And, in fact, today he's paying a court reporter to transcribe these proceedings. The amount he's going to pay the court reporter, even for these proceedings, will be at least to the amount he's owed to the

Industrial Commission in attorney's fees.

**JUSTICE PFEIFER:** Counsel, how — I have forgotten because the — we see a lot of his — we have seen a lot of his work over time. How did we end up getting here today? Did we initiate that and ask you all to participate? Or did you initiate that?

**MR. BARNES:** We, on behalf of the — of the Attorney General's Office, on behalf of the Commission, after not receiving payment, filed motion to show cause why Mr. Howard should not be found —

**JUSTICE PFEIFER:** Okay.

**MR. BARNES:** — in contempt for failure to follow the Court's order.

**JUSTICE PFEIFER:** And so is the Attorney General of the State of Ohio advocating that we put Mr. Howard in jail for failing to pay Court costs in this litigation?

**MR. BARNES:** The Industrial Commission, whom we represent, is — is advocating to the Court that some sanction other than attorney's fees has to be — has to be levied because the ordering or the requirement for him to pay attorney's fees is obviously not working. Some

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(1) further substantial sanction has to be issued for  
 (2) Mr. Howard to finally recognize that this is a  
 (3) serious issue.  
 (4) **JUSTICE PFEIFER:** I guess I'm asking, we  
 (5) got rid of debtors' prisons a long time ago.  
 (6) Are — Are we going back to that through a  
 (7) contempt action?  
 (8) **MR. BARNES:** No, I think — I think what  
 (9) the — what the Industrial Commission is asking  
 (10) this Court to do is to simply place a date certain  
 (11) upon Mr. Howard to — to — to pay what this Court  
 (12) has ordered by way of attorney's fees; and if not,  
 (13) then issue further sanctions as the Court deems  
 (14) a —  
 (15) **JUSTICE PFEIFER:** Being —  
 (16) **MR. BARNES:** — appropriate.  
 (17) **JUSTICE PFEIFER:** Being what? I mean,  
 (18) you're asking — I mean, you're asking that jail  
 (19) is the ultimate sanction here, right?  
 (20) **MR. BARNES:** We're — If — If — If  
 (21) that's what's necessary.  
 (22) **JUSTICE PFEIFER:** Well, no, I —  
 (23) **MR. BARNES:** To —  
 (24) **JUSTICE PFEIFER:** That's why I ask you  
 (25) how we got here. Apparently, we got here because

(1) represent — The employer was represented by  
 (2) counsel even with the — The employer, I believe,  
 (3) was represented even before the Supreme Court  
 (4) initially.  
 (5) **JUSTICE RESNICK:** Initially. How long  
 (6) ago was that?  
 (7) **MR. BARNES:** I'm not sure, your Honor.  
 (8) **JUSTICE RESNICK:** See, I'm aware that  
 (9) there aren't any Food Towns in Ohio, in Toledo.  
 (10) **MR. BARNES:** And we're not here — we're  
 (11) not here, speaking on behalf of the employer. We  
 (12) think that the Industrial Commission's motion  
 (13) stands on its own. And it's — And it's not  
 (14) necessarily the \$384 because the — the inquiry  
 (15) does not end there. Because if — if the Court  
 (16) does not prevent Mr. Howard from these continuous  
 (17) frivolous pleadings, then my client will continue  
 (18) to have to —  
 (19) **JUSTICE PFEIFER:** I think we've taken —  
 (20) **MR. BARNES:** — use its resources.  
 (21) **JUSTICE PFEIFER:** — we've taken measures  
 (22) to do that, haven't we?  
 (23) **MR. BARNES:** Yes. And — And they've  
 (24) not — respectfully, they've not worked, your  
 (25) Honor. And — And I would agree that if it

(1) you folks decided we should be here and he should  
 (2) be here at this — this point over how much?  
 (3) **MR. BARNES:** Well — Well, for the — for  
 (4) the Industrial Commission, it's — it's — it's  
 (5) \$384; for the —  
 (6) **JUSTICE PFEIFER:** For the —  
 (7) **MR. BARNES:** — for the codefendant, it's  
 (8) a thousand-dollars-plus.  
 (9) **JUSTICE PFEIFER:** Did the — Did the  
 (10) codefendant ask for this hearing?  
 (11) **MR. BARNES:** No.  
 (12) **JUSTICE PFEIFER:** Okay.  
 (13) **MR. BARNES:** And —  
 (14) **JUSTICE PFEIFER:** And so for the  
 (15) Industrial Commission to recover 300-and-some  
 (16) dollars, you're asking us to potentially send him  
 (17) to jail?  
 (18) **MR. BARNES:** Well, speaking — speaking  
 (19) to the employer, from a cost-effective standpoint,  
 (20) it's really not cost effective for that employer  
 (21) to travel down from Toledo to these proceedings —  
 (22) **JUSTICE PFEIFER:** Well, just it's —  
 (23) Justice Resnick just suggested that the employer  
 (24) doesn't even exist. Does it or doesn't it?  
 (25) **MR. BARNES:** The — The employer was

(1) takes — if it takes a — a determination —  
 (2) **JUSTICE PFEIFER:** If it takes jail to —  
 (3) to stop this man from abusing a copy machine, the  
 (4) Industrial Commission thinks we should impose  
 (5) that?  
 (6) **MR. BARNES:** Yes.  
 (7) **JUSTICE PFEIFER:** Wow. Be nice of the  
 (8) Industrial Commission had — Well, I guess that's  
 (9) the Bureau, not the Industrial Commission. Over  
 (10) mind.  
 (11) **CHIEF JUSTICE MOYER:** Isn't the issue  
 (12) that there's a Court order — the Court has put on  
 (13) an order and it's a question of whether we are  
 (14) going to — whether our order means anything?  
 (15) So next case maybe \$2,000 in fees, well,  
 (16) we've decided, well, a person can't pay it or  
 (17) whatever, let it go because somebody thinks that  
 (18) we ought to let it go. That's — That's the  
 (19) issue. It's not the — It's not the amount.  
 (20) It's the question of the issue is that  
 (21) the Court has put on an order. He's in contempt.  
 (22) He hasn't paid. Like every other court, any other  
 (23) court can do, and it's a question of whether we  
 (24) are going to enforce our order and how we do that.  
 (25) That's —

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(1) And usually the threat of putting somebody in jail  
(2) causes them to find the money. That's — That's  
(3) the issue.

(4) **JUSTICE RESNICK:** It —

(5) **MR. BARNES:** Exactly, your Honor.

(6) **JUSTICE RESNICK:** Is there any way that  
(7) you can determine where Mr. Howard is getting the  
(8) money to pay the court reporter and do all these  
(9) other things? Have you looked into that?

(10) **MR. BARNES:** No, your Honor, we — we  
(11) have not.

(12) **JUSTICE RESNICK:** What was his injury?  
(13) What was his original injury?

(14) **MR. BARNES:** I'm really not sure what his  
(15) original injury was, your Honor.

(16) **JUSTICE RESNICK:** I know it goes back so  
(17) long you wouldn't be able to remember. Thank you.

(18) **MR. BARNES:** But, again, your Honors, I  
(19) will remind — I will remind you that the only  
(20) issue before the Court is Mr. Howard's failure to  
(21) abide by this Court's order. The Industrial  
(22) Commission does not proudly bring Mr. Howard  
(23) before this Court, but it's not the Industrial  
(24) Comm- — Commission that's — that's required to  
(25) levy a penalty of sorts against Mr. Howard for his

(1) **MR. HOWARD:** Your Honor.

(2) **CHIEF JUSTICE MOYER:** What do you think  
(3) about this now?

(4) **MR. HOWARD:** First of all, I'm —

(5) **CHIEF JUSTICE MOYER:** You spent a lot of  
(6) money on paper and filing fees and you could have  
(7) had this paid off.

(8) **MR. HOWARD:** Yes, sir.

(9) First of all, I filed this case under an  
(10) affidavit of indigency 2003-1572 case. And as the  
(11) Justice also said, Food Town is no longer in  
(12) existence in Ohio. They're no longer in  
(13) existence.

(14) **CHIEF JUSTICE MOYER:** Well, we have an  
(15) attorney at Eastman & Smith, a firm that's shown  
(16) as of record representing them, whoever they are.  
(17) So — and we've — and they've — you know,  
(18) they've given us information as to what their  
(19) costs and legal fees are.

(20) So there's an entity here that — that  
(21) we've determined is owed — two entities,  
(22) Industrial Commission and — and Food Town,  
(23) whoever — I mean, it's not for us to decide who  
(24) Food Town's successor is. They've been  
(25) represented here.

(1) failure to abide by this Court's order.

(2) The Industrial Commission is certainly  
(3) not promoting putting someone in jail over \$384;  
(4) but, again, the monetary amount is not at issue.  
(5) The issue is that —

(6) **JUSTICE PFEIFER:** Well, but you are,  
(7) aren't you? I mean, what else are you suggesting?

(8) **MR. BARNES:** The — The Commission is  
(9) suggesting that the Court enforce its order to  
(10) prevent Mr. Howard from his continued filings —

(11) **JUSTICE PFEIFER:** How?

(12) **MR. BARNES:** — of frivolous lawsuits.

(13) **JUSTICE PFEIFER:** How?

(14) **MR. BARNES:** The — I believe an order  
(15) could read: Mr. Howard, you are ordered to pay  
(16) these attorney's fees pursuant to our previous  
(17) Court orders by a date certain or further  
(18) sanctions, up to and including imprisonment, will  
(19) be ordered.

(20) **CHIEF JUSTICE MOYER:** Thank you,  
(21) Mr. Barnes.

(22) **MR. BARNES:** Thank you.

(23) **CHIEF JUSTICE MOYER:** Mr. Howard, you  
(24) have saved almost five minutes of your — of your  
(25) time.

(1) So I think we need to get to the point of  
(2) how are you going for pay the 1,300-and-some  
(3) dollars. That's the issue.

(4) **MR. HOWARD:** Okay. I did calculate some  
(5) figures here. I mean, taking away my bill money  
(6) and also take away my copy costs, quote-unquote,  
(7) and I came up with a calculation of paying the  
(8) Industrial Commission the \$384 within 30 days and  
(9) more or less make arrangements, \$50 per month  
(10) towards Food Town.

(11) **CHIEF JUSTICE MOYER:** Okay. We'll —  
(12) We'll take your word. Well, we have to — we're  
(13) not going to make a decision here, but — but  
(14) we — I think I can say we'd like to take your  
(15) word for that and not hold over you the threat of  
(16) incarceration. It seems that that's not  
(17) appropriate for this amount of money.

(18) So we will make a decision and you will  
(19) be advised of what that decision is.

(20) We appreciate the fact that you've  
(21) apparently seen that this is a debt you have to  
(22) pay and you've offered to — to make payments.  
(23) And we'll — we'll certainly take that into very  
(24) careful consideration in deciding what to do with  
(25) the contempt order.

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(1) You have — There's no question you have  
(2) the ability to make those payments that you've  
(3) offered to make?

(4) MR. HOWARD: As — As far as my  
(5) calculation, your Honor, that's — I think that  
(6) would be within reason to — in order to do it.

(7) CHIEF JUSTICE MOYER: All right. Does  
(8) anyone have any questions?

(9) JUSTICE RESNICK: I just want to make  
(10) sure that you're sincere and that you're going to  
(11) do this, that you are going to make these  
(12) payments.

(13) MR. HOWARD: Yes, your Honor, I am.

(14) JUSTICE RESNICK: I just — What was your  
(15) original disability? What was your injury?

(16) MR. HOWARD: I've had three, actually. I  
(17) had one in 1985 where I injured my back and my  
(18) neck on — on a forklift equipment.

(19) In 1993, I had an injury to my neck. I  
(20) was lifting a case underneath a slot, and as I  
(21) rose up, I hit my head on the crossbeam, just a  
(22) rack that holds some of the product up on the —  
(23) on the racks.

(24) Also — Well, there was a 1982 injury  
(25) that was due to lifting. I had surgery behind it.

(1) concluded at 12:15 o'clock p.m.  
(2) on Tuesday, November 30, 2005.)

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(1) I had a hernia surgery on the right inguinal side.

(2) Both of those claims, like I said, have  
(3) been an effortless fight. I mean, it's been a  
(4) fight to the finish to get things resolved. And  
(5) it's just — it's crazy.

(6) Like I said, I receive Social Security  
(7) disability benefits and they — they total like  
(8) \$1,500 a month. After you take out your bills and  
(9) you take out your, you know, your cost of living,  
(10) things of that nature, that — that kind of throws  
(11) a monkey wrench in the money that is extra. And I  
(12) have, in all sincerity, I intend to, you know, to  
(13) follow as I said.

(14) CHIEF JUSTICE MOYER: Well, nobody wants  
(15) to see you back — you don't want to be back here;  
(16) we don't want to see you back here.

(17) MR. HOWARD: No, sir.

(18) CHIEF JUSTICE MOYER: So — But we'll  
(19) have you come back if you can't make the — if you  
(20) don't make the payments. So make the payments.

(21) Case is submitted. You will be advised  
(22) of our opinion.

(23) MR. HOWARD: Thank you, your Honor.

(24)  
(25) (Thereupon, the hearing was

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