

In the
Supreme Court of Ohio

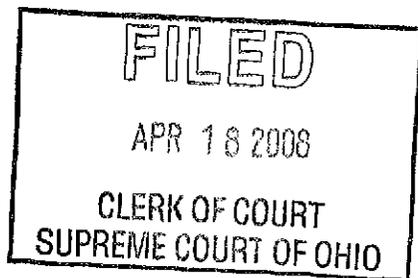
State of Ohio ex rel.	:	CASE NO. 2007-747
Pilkington North America, Inc.,	:	
	:	
Appellee,	:	On Appeal from the
	:	Franklin County Court of Appeals, Tenth
vs.	:	Appellate District, Case No. 06AP 232
	:	
Industrial Commission of Ohio	:	
and Donald F. Stein,	:	
	:	
Appellants.	:	

**MEMORANDUM IN RESPONSE TO MOTION FOR RECONSIDERATION
OF APPELLANT, INDUSTRIAL COMMISSION OF OHIO**

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INTRODUCTION

This Court unanimously held that the last-injurious-exposure rule applies to assign liability between multiple employers. There is no reason for the Court to reconsider that opinion.

Appellee Libby Owens Ford Pilkington North America, Inc. (“Pilkington”) asks the Court to reconsider its opinion because Respondent Donald F. Stein’s (“Stein”) worked for a single employer with multiple insurance statuses. Pilkington raises no new arguments, instead it uses the same arguments it raised in its merit brief. Pilkington again asks this Court to reject fifty years of precedent. The Court rejected Pilkington’s single employer argument in its opinion, and has no reason to consider it again.

ARGUMENT

When a question of liability arises between multiple insurance statuses of the same employer, the result from an occupational disease or condition is the same as for multiple employers; liability for a claim is determined by the employer or the insurance status of an employer at the time the last injurious exposure occurred. Multiple insurance statuses arise when, as here, Pilkington originally contributed to the State Fund and later became self-insured. Contrary to Pilkington’s argument, the last-injurious-exposure rule has long applied to assess liability between a single employer’s multiple insurance risks. *State ex rel. Marion Power Shovel Co. v. Indus. Comm.* (1950), 153 Ohio St. 451. In *Marion Power Shovel*, the employer had been self-insured for some time and then began contributing to the State Fund. The Court reiterated that the last-injurious-exposure rule governed the liability assessment between Marion Power Shovel’s multiple insurance statuses. *State ex rel. Occidental Chem. Corp. v. BWC*, 91 Ohio St.3d 249, 251, 2001-Ohio-29. *Marion Power Shovel* establishes a critical tenet, which this Court has no reason to overrule now: the last-injurious-exposure rule applies to both the allowance and

the liability assignment of a claim, whether that assignment is between multiple employers or between multiple insurance risks of the same employer.

For the reasons set forth above, Pilkington's motion to reconsider should be denied.

Respectfully submitted,

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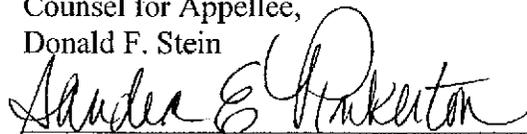
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Memorandum in Response of Appellant, Industrial Commission of Ohio was sent by regular U.S. Mail, postage prepaid, on April 18, 2008 to:

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