

**NOT RECOMMENDED FOR FULL-TEXT PUBLICATION**

**File Name: 08a0440n.06**

**Filed: July 25, 2008**

**No. 07-4131**

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

AVALON PRECISION CASTING CO.,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	
	)	
INDUSTRIAL COMMISSION OF OHIO;	)	
ROBIN NASH, Staff Hearing Officer;	)	ON APPEAL FROM THE UNITED
GARY DICEGLIO, Chairman; WILLIAM E.	)	STATES DISTRICT COURT FOR THE
THOMPSON, Member; KEVIN R.	)	NORTHERN DISTRICT OF OHIO
ABRAMS, Member; OHIO BUREAU OF	)	
WORKERS' COMPENSATION; MARSHA	)	
P. RYAN, Administrator; JOHNNIE	)	
EDWARDS,	)	
	)	
Defendants-Appellees.	)	

Before: SUTTON and COOK, Circuit Judges; and ROSE,\* District Judge.

PER CURIAM. A tow-motor accident injured Johnnie Edwards's knee at work. Edwards received disability payments, as well as a safety-violation ("VSSR") award for \$3,310.72 because the tow motor lacked a working horn to warn Edwards as it approached.

Instead of seeking Ohio judicial review, his employer, Avalon Precision Casting Company ("Avalon"), filed this 42 U.S.C. § 1983 action asking the court to declare that: OSHA preempts

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\*The Honorable Thomas M. Rose, United States District Judge for the Southern District of Ohio, sitting by designation.

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*Avalon Precision Casting Co. v. Industrial Commission of Ohio, et al.*

Ohio's VSSR scheme; the Ohio Administrative Code section requiring a working horn is impermissibly vague; and Ohio's prohibition on cross-examining a claimant's personal physician in workers' compensation proceedings violates due process. The district court, in a thorough and thoughtful opinion with which we agree, rejected each of Avalon's claims, and we adopt the district court's Opinion as the opinion of this panel. *See Avalon Precision Casting Co. v. Indus. Comm'n of Ohio*, No. 1:04-cv-02292, 2006 WL 3332212 (N.D. Ohio Nov. 15, 2006).

In a separate Order the district court denied Avalon default judgment against Edwards. Avalon's appeal also targets that decision, relying on the compulsory phrasing of the default-judgment rule that the clerk "*must* enter the party's default" if that party "has failed to plead or otherwise defend," as did Edwards. *See* Fed. R. Civ P. 55(a) (emphasis added). But § 1983 confers jurisdiction only "[t]o redress the deprivation, *under color of any State law . . .* of any right, privilege, or immunity secured by the Constitution of the United States . . ." *See Watson v. Kenlick Coal Co.*, 498 F.2d 1183, 1185 (6th Cir. 1974); *see also Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998); *Bell v. Hood*, 327 U.S. 678, 682–83 (1946). The district court thus lacked jurisdiction to grant a judgment against Edwards, a defendant who indisputably is not a state actor and who cannot be traced to any of these alleged constitutional violations.

We affirm.