



{¶6} "5) Pursuant to R.C. 4123.931, the BWC asserted a subrogation right in the proceeds of the \$29,000 settlement of the personal injury lawsuit; \*\*\*

{¶7} "6) Joint Stipulation Exhibit A, which is attached, is an authentic and admissible copy of a November 6, 1998, letter from Jay Hurlbert, BWC Subrogation Manager, to Corrine S. Carman, an attorney representing Ms. Young;

{¶8} "7) Joint Stipulation Exhibit B, which is attached, is an authentic and admissible copy of a November 11, 1998, letter from Corrine S. Carman to Mr. Hurlbert. The BWC did not execute and was not in any way involved in the "General Release" referenced in the letter, as the General Release pertained only to the settlement of the personal injury lawsuit which Ms. Young settled for \$29,000;

{¶9} "8) Joint Stipulation Exhibit C, which is attached, is an authentic and admissible copy of the check for \$5,000 referenced in Joint Stipulation Exhibit B."

{¶10} Subsequent to the settlement of plaintiff's tort action and the payment to BWC, the Ohio Supreme Court in *Holeton v. Crouse Cartage Co.*, 92 Ohio St.3d 115, 2001-Ohio-109, held that R.C. 4123.931 was unconstitutional. On the grounds that BWC never had right of subrogation, plaintiff seeks recovery of the funds that she paid to BWC plus prejudgment interest.

{¶11} Plaintiff first argues that the effect of the *Holeton* decision on R.C. 4123.931 is that the statute was never the law. However, in *DeRolph v. State*, 78 Ohio St.3d 419, 1997-Ohio-87, the Supreme Court of Ohio stated: "\*\*\* an agreement by one party to borrow and repay money and another party to lend the money results in a contract. As we stated in *Peerless Elec. Co. v. Bowers* (1955), 164 Ohio St. 209, 210,

'the general rule is that a decision of a court of supreme jurisdiction overruling a former decision is retrospective in its operation, and the effect is not that the former was bad law, but that it never was the law. *The one general exception to this rule is where contractual rights have arisen or vested rights have been acquired under the prior decision.*' Subsequently, in *Wendell v. AmeriTrust Co., N.A.* (1994), 69 Ohio St.3d 74, 77, this court said that 'in *Peerless Elec. Co. v. Bowers* \*\*\*, we held that, generally, a decision of this court overruling a previous decision is to be applied retrospectively with an exception for contractual or vested rights that have arisen under the previous decision. *This reasoning applies with similar force when the court's decision strikes down a statute as unconstitutional.*'" (Original emphasis.)

{¶12} Plaintiff acknowledges that there is a contract exception but argues that there was no contract in this case because there was no meeting of the minds, no consideration, and no definite and certain terms setting forth an agreement. Thus, plaintiff contends that the exception cannot be applied to this case.

{¶13} This court has had the opportunity to address similar issues to those that have been raised in the instant case. In *Clark v. Ohio Bureau of Workers' Compensation*, 119 Ohio Misc.2d 17, 2002-Ohio-3522, this court held that the *Holeton* decision should not be applied retroactively so as to nullify vested contractual rights and obligations. In affirming this court's decision in *Clark*, the Tenth District Court of Appeals held that "[a]s an agency of the state of Ohio, the BWC is authorized to enter into contracts \*\*\*. The question is whether the BWC's contractual rights vested before

the Ohio Supreme Court declared the subrogation statute unconstitutional. Here, the contractual rights of the BWC vested at the time the contractual obligations of the contract were fulfilled, i.e., at the time the BWC received payment." *Clark v. Bureau of Workers' Comp.*, Franklin App. No. 02AP-743, 2003-Ohio-2193 at paragraphs 11-12. See, also, *Kissinger v. Pavlus*, Franklin App. No. 01AP-1203, 2002-Ohio-3083, at paragraph 27. The Court of Appeals in *Clark*, at paragraph 11 explains as follows:

{¶14} "Here, the BWC made an offer to compromise its subrogation claim through a contract in which the parties agreed to mutual concessions in order to avoid litigation with its attendant expenses and resultant burden upon the legal system. The stated purpose of the settlement agreement was to avoid litigation. The release stated, in pertinent part, that the settlement was 'the compromise of a doubtful and disputed claim and that the payment made is not to be construed as an admission of liability on the part of the party or parties hereby released and that said releases deny liability therefore and intend merely to avoid litigation and buy their peace.' \*\*\* Thus, we conclude that the payment of \$155,000 to the BWC arose as a result of a settlement agreement designed to avoid further litigation of the issue of the BWC's subrogation claim."

{¶15} In *Clark*, as here, plaintiff sought recovery of sums paid to BWC pursuant to R.C. 4123.931. Although the parties in this case did not execute a separate settlement agreement and release, the parties did exchange correspondence during the negotiation process which culminated in plaintiff's execution of a settlement draft.

{¶16} In *Parsons v. Bureau of Workers' Compensation* (July 8, 2003), Court of Claims No. 2001-07513, this court found, under circumstances similar to those presented in this case, that the parties had executed a binding settlement agreement. In finding that a valid enforceable agreement existed, this court in *Parsons*, stated:

{¶17} "'In order to formulate a binding, legal agreement, contract law requires an offer, acceptance, consideration, and mutual assent between two parties \*\*\*.' *Ginn v. Horn* (April 7, 1987), Franklin App. No. 86AP-668. Upon review of the joint exhibits submitted by the parties, the court finds that plaintiff and BWC reached an agreement to terminate BWC's subrogation lien for the negotiated amount of \$775,000. The letters that were exchanged describe the negotiation process; accordingly, this court finds that defendant asserted a right to more than \$854,000 and subsequently offered to settle the claim for a reduced amount. (Joint Exhibits A and C.) Plaintiff accepted the offer and paid \$775,000. (Joint Exhibit B.) The monies were received by BWC on June 12, 2001. (Joint Stipulation of Fact #6.)"

{¶18} In this case, as in *Parsons*, supra, the written correspondence between the parties, together with plaintiff's payment "representing a full and final settlement of the Bureau's subrogated interest" (Joint Stipulation Exhibit A & B), constitutes evidence of the essential terms of the parties' settlement agreement and performance thereof. Nevertheless, plaintiff argues that the agreement is not binding upon plaintiff because it was not supported by sufficient consideration. The court disagrees.

{¶19} Valid consideration may consist of either a detriment to the promisee or a benefit to the promisor. *Ford*

v. *Tandy Transp., Inc.* (1993), 86 Ohio App.3d 364, 384. The consideration given by each party to a contract need not be expressed and "may be inferred from the terms and obvious import of the contract." *Nilavar v. Osborn* 127 Ohio App.3d 1, quoting 17 Ohio Jurisprudence 3d 478, Contracts, Section 46. Once consideration is shown, a court will not generally inquire into the adequacy of the consideration. *Ford*, at 384.

{¶20} The evidence establishes that the parties agreed to settle this claim for a compromised amount in order to avoid the expense of protracted litigation. There is evidence that plaintiff's payment represents a reduction in the amount due to BWC and that the payment by plaintiff constitutes a complete settlement of any claims for subrogation. Thus, the evidence demonstrates that the parties' agreement is supported by legally sufficient consideration. The evidence also demonstrates that the parties' agreement contained definite and certain terms.

{¶21} For the foregoing reasons, the court finds that the parties entered into a valid contract and accordingly, judgment shall be rendered in favor of defendant.

IN THE COURT OF CLAIMS OF OHIO

PENNY YOUNG	:	
Plaintiff	:	CASE NO. 2002-04151
v.	:	Judge Fred J. Shoemaker
	:	<u>JUDGMENT ENTRY</u>
OHIO BUREAU OF WORKERS' COMPENSATION	:	
	:	

Defendant

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This case has been submitted for a decision based upon the stipulated facts and trial briefs. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of defendant.

Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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FRED J. SHOEMAKER  
Judge

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