

# Court of Claims of Ohio

The Ohio Judicial Center  
65 South Front Street, Third Floor  
Columbus, OH 43215  
614.387.9800 or 1.800.824.8263  
[www.cco.state.oh.us](http://www.cco.state.oh.us)

LUMBERMAN'S UNDERWRITING  
ALLIANCE

Plaintiff

v.

INDUSTRIAL COMMISSION OF OHIO,  
et al.

Defendants

Case No. 2006-01408

Judge J. Craig Wright

DECISION

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{¶1} On January 16, 2007, defendants filed a motion for summary judgment pursuant to Civ.R. 56(B). On March 29, 2007, plaintiff filed a motion for summary judgment pursuant to Civ.R. 56(A). On June 7, 2007, an oral hearing was held on both motions.

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} “Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party’s favor.” See, also, *Gilbert v. Summit County*, 104 Ohio St.3d 660, 661, 2004-Ohio-7108; citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶4} Plaintiff originally filed this claim on October 29, 2004, in Case No. 2004-09932. Plaintiff moved the court in Case No. 2004-09932 for summary judgment and on

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December 29, 2005, the court issued a decision denying plaintiff's motion. Plaintiff dismissed Case No. 2004-09932 by filing a notice of voluntary dismissal pursuant to Civ.R. 41(A). Plaintiff filed this action on January 18, 2006.

{¶5} The relevant facts were set forth in the decision in Case No. 2004-09932, as follows:

{¶6} "This case involves a dispute over the payment of workers' compensation benefits. Plaintiff, Lumberman's Underwriting Alliance, was the Tennessee workers' compensation insurer for MS Carriers, Inc. (MSC). On May 21, 2001, Catherine Riley, who was hired in Memphis, Tennessee as a semi-truck driver, was injured in a motor vehicle accident in Ohio while she was working for MSC. Riley applied for workers' compensation benefits in Ohio and her claim was denied in June 2001. Riley then filed for benefits in Tennessee. Her claim was allowed, and plaintiff paid Riley benefits in excess of \$90,000.

{¶7} "Riley subsequently filed a notice of appeal from the denial of her claim in Ohio. Plaintiff argued that Tennessee had sole jurisdiction of the claim for benefits, and actively opposed Riley's appeal for benefits in Ohio. Nevertheless, a district hearing officer allowed the claim after finding that jurisdiction in Ohio was proper."

{¶8} In this refiled case, plaintiff is seeking reimbursement from defendants under a theory of unjust enrichment for the payments made to Riley. Plaintiff again relies on the holding of *Liberty Mutual Ins. Co. v. Industrial Commission of Ohio* (1988), 40 Ohio St.3d 109, arguing that it became entitled to reimbursement from defendants once benefits were awarded to Riley under the Ohio workers' compensation system.

{¶9} In *Liberty*, an insurance carrier paid interim benefits to a worker who originally filed a claim in Mississippi even though the worker was not entitled to benefits under Mississippi law. Mississippi paid the worker until it could be determined which state was the proper situs for workers' compensation coverage, since both the worker's employment status and the law applicable to the claim were unclear. Once it was determined that the worker was entitled to benefits in Ohio, Liberty sought reimbursement for the monies it had

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expended in good faith. The Supreme Court of Ohio noted that the worker was “an Ohio resident, hired in Ohio, and only on job assignment in Mississippi \*\*\*.” Id. The Supreme Court stated “[W]e believe the commission is unjustly enriched when an employer or its insurer pays benefits under the laws of another state *where such benefits are later determined to be the responsibility of the commission.*” Id. at 111. (Emphasis added.)

{¶10} Defendants argue that the facts in this case differ significantly from the circumstances addressed in *Liberty*. In the instant case, it was determined that Riley was entitled to benefits both in Tennessee and in Ohio. In addition, defendants note that although Riley had signed an agreement with the employer (C112 agreement) wherein she consented to have any workers’ compensation matters adjudicated under the laws of Tennessee, plaintiff failed to timely file the document in Ohio. According to defendants, plaintiff has failed to prove that defendants have been unjustly enriched.

{¶11} In the court’s prior decision in Case No. 2004-09932, the court both distinguished *Liberty* and borrowed from the common law of the state of Minnesota in analyzing plaintiff’s claim for unjust enrichment.

{¶12} “*Liberty* discusses the effect of reimbursement owed by defendants when another state pays disputed benefits; however, it does not address the situation as here where a worker is entitled to benefits in more than one state. In a case from another jurisdiction, *Aetna Casualty & Surety Company v. Minnesota Assigned Risk Plan*, (July 16, 1996), Minn. Ct. App. No. C7-96-446, the Court of Appeals of Minnesota considered a claim similar to the one raised in the instant case. In *Aetna*, the worker was entitled to benefits under two states’ compensation programs, received benefits under the laws of one state and then elected to receive further benefits from the second state. The court held that ‘both avenues of relief are appropriate and equity requires only that the second state prevent double recovery by crediting the benefits received in the first state against those awarded in the second.’ Id. at 6. See, also, Restatement of Conflict of Laws § 182

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& cmt. b (recognizing that compensation may be allowed under the laws of two states, but providing for an offset in the event of recovery under both). The court further held that ‘Aetna cannot maintain its unjust enrichment claim without showing it was the victim of improper exploitation.’ Id. \*\*\* [T]he evidence submitted by the parties establishes that jurisdiction was proper in both Ohio and Tennessee.”

{¶13} Plaintiff now argues that the court’s application of the *Aetna* case was in error in that Riley’s Tennessee claim no longer existed once benefits were awarded in Ohio. Thus, plaintiff asserts this is not a case where a claimant is entitled to compensation under the law of two states. Based upon that assertion, plaintiff argues that *Liberty* controls. The court disagrees.

{¶14} There is no dispute that when Riley received her benefits from plaintiff she did so under the law of the state of Tennessee. Pursuant to the C112 agreement executed by Riley and her employer, Riley agreed that her entitlement to benefits would be determined in accordance with Tennessee law. Thus, plaintiff was legally obligated to make those payments to Riley under Tennessee law. That fact distinguishes this case from *Liberty*, supra, where payments were made by the state of Mississippi only on an interim basis until such time as it was determined that the Ohio commission was responsible for the claim. In *Liberty* the claimant was never entitled to workers’ compensation benefits under Mississippi law. The circumstances of this case are similar to the *Aetna* case where the claimant received benefits from one jurisdiction and then elected to receive further benefits from another jurisdiction. Under such circumstances equity requires only that the second state prevent double recovery. *Aetna*, supra, at 6.

{¶15} Plaintiff next argues that it is inequitable for defendants to retain the benefit of the payments plaintiff made to Riley because it was defendants’ conduct that resulted in the allowance of Riley’s claim in Ohio. Again, the court disagrees.

{¶16} Unjust enrichment derives from the equitable principal that no person may retain a benefit that would result in injustice. *Hambleton v. R.G. Barry Corp.* (1984), 12

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Ohio St.3d 179, 183. Accordingly, unjust enrichment entitles a party to restitution for the reasonable value of a benefit conferred. *St. Vincent Med. Ctr. v. Sader* (1995), 100 Ohio App.3d 379, 384.

{¶17} Although it was defendants' hearing officer who determined that the C112 agreement was untimely filed, it was the conduct of plaintiff's insured and its insured's employee that precipitated the loss of jurisdiction in Tennessee. Indeed, it was Riley who sought benefits in Ohio even though she had agreed to be bound by Tennessee law, and it was MSC that neglected to timely file the C112 agreement. Defendants simply adjudicated Riley's claim and awarded benefits pursuant to Ohio law. Under such circumstances and as a matter of law, the equities favor defendants.

{¶18} Finally, to the extent that plaintiff argues that it should receive a credit for workers' compensation paid as a result of Riley's claim, plaintiff has presented no evidence that its premiums were adversely affected by that claim.

{¶19} Upon review of the cross-motions for summary judgment and the memoranda filed by the parties, the court finds that the only reasonable conclusion to be drawn from the evidence is that defendants' retention of the benefit conferred upon it by plaintiff's payments to Riley does not work an injustice. Accordingly, defendants are entitled to judgment as a matter of law. Thus, plaintiff's motion for summary judgment shall be denied and defendants' motion shall be granted.

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Judge J. Craig Wright

JUDGMENT ENTRY

An oral hearing was conducted in this case upon both parties' motions for summary judgment. For the reasons set forth in the decision filed concurrently herewith, plaintiff's motion for summary judgment is DENIED and defendants' motion for summary judgment is GRANTED. Judgment is rendered in favor of defendants. 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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J. CRAIG WRIGHT  
Judge

cc:

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