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CIVIL LIABILITY

Punitive Damages Awarded Against Estate's Executrix

Mary Longest's will named her daughter, Bonnie Kirk, executrix and devised 50% of the estate to her, with the remainder going to two grandchildren, Mary Lacey and Jonathan Lucas. Fifteen months after the will was admitted to probate, Lacey and Lucas filed suit, claiming that Kirk had defamed Lacey and breached her fiduciary duty by failing to distribute the estate's property. Kirk's answer included allegations that Lacey murdered her mother and Lacey and Lucas stole some of their grandmother's property.

Kirk hired an independent testing company to check the food in her mother's freezer for the presence of poisons. She also reported her suspicions to the police, who conducted a thorough investigation, including a review of the test results obtained by the independent testing company, and ultimately concluded that her mother's death was due to natural causes. However, Kirk still refused to send their shares of the estate to Lacey and Lucas.

At mediation, the parties agreed to a settlement in which Kirk promised to distribute the estate in exchange for plaintiffs' agreement to dismiss their lawsuit. But, Kirk later refused to carry out the settlement, so the case went to trial, at which the jury found that Kirk breached her fiduciary duty to the plaintiffs and awarded each of them $6,569 in compensatory and $300,000 in punitive damages. The jury also determined that Lacey

In This Issue…

CIVIL LIABILITY

WORKERS' COMPENSATION

was entitled to $50,000 in compensatory and $100,000 in punitive damages for defamation.

The trial judge reduced the $300,000 punitive damage awards to $250,000 pursuant to N.C.G.S. § 1D-25(b) and taxed Kirk with $93,709 in attorney's fees. After Kirk's Rule 59 motion for a new trial was denied, she gave notice of appeal. Plaintiffs then cross-appealed the attorney fee award.

On December 31, in ***Lacey v. Kirk***, the Court of Appeals quoted from ***Worthington v. Bynum***, 305 N.C. 478 (1982) in holding that "an appellate court's review of a trial judge's discretionary ruling either granting or denying a motion to set aside a verdict and order a new trial is strictly limited to the determination of whether the record affirmatively demonstrates a manifest abuse of discretion by the judge." Therefore, the trial court's resolution of a Rule 59 motion will only be reversed in "exceptional cases where an abuse of discretion is clearly shown."

Claiming to have been "unfairly prejudiced" by the trial judge's "repeated expressions of impatience" and his "expression of opinions indicating that … [it] had a low opinion of [her] truthfulness," Kirk argued that her case was analogous to ***McNeill v. Durham County ABC Board***, 322 N.C. 425 (1988), in which the Supreme Court held that the cumulative effect of the remarks the trial court directed toward defense counsel "created an appearance of antagonism and had the effect of depriving [the defendant] of a fair trial." But, the Court disagreed. Finding that it "rested on a number of factors … not present in this case," the Court distinguished ***McNeill*** and concluded that the comments made by the judge during the course of the trial did not justify reversal of his denial of Kirk's motion for a new trial.

As for her contention that the damages awarded for breach of fiduciary duty were "grossly excessive," again the Court disagreed. It found ample evidentiary support for the less than $14,000 in compensatory damages awarded by the jury. It then addressed Kirk's argument that the corresponding punitive damage award violated the due process clause of the Fourteenth Amendment. Citing as authority the provisions of N.C.G.S. § 1D-25(b) and the holding in ***Everhart v. O'Charley's Inc.***, 200 N.C. App. 142 (2009), the Court identified the factors to consider in determining whether a punitive damages award is grossly excessive: "(1) the degree of responsibility of the defendant's conduct; (2) the disparity between the compensatory and punitive damages awards; and (3) available sanctions for comparable conduct." Because it found that Kirk's conduct was "exceedingly reprehensible," and since the 38 to 1 ratio of punitive to compensatory damages was "fully consistent with ratios that have been held not to be excessive in other cases," the Court found no merit in her argument that the punitive damages the jury awarded for breach of fiduciary duty were excessive and, therefore, unconstitutional.

Likewise, it found no merit in Kirk's exception to the damages the jury awarded for defamation. After defining slander *per se* and distinguishing between slander *per se* and slander *per quod*, the Court held that "[a] plaintiff may obtain a damage recovery … [for] slander *per se* … without specifically pleading or proving special damages." Lacey's testimony was "more than sufficient" to establish that she "experienced significant emotional trauma stemming from Defendant's false accusations," so there was no error in the jury's defamation award.

But, the Court found error in the attorney's fee the trial court taxed against Kirk. The order setting the fee found that the amount plaintiffs' counsel charged was reasonable and "could properly be taxed pursuant to N.C. Gen. Stat. § 7A-305(d) in an amount that exceeded $255,000." In explaining why it only awarded $93,709, the court stated that the fee would have been much greater, but for the fact that Kirk had been ordered to pay "a substantial amount of punitive damages." However, because "the underlying purposes sought to be effectuated by an award of

attorneys' fees and an award of punitive damages are different," the Court found that it was an abuse of discretion for the trial court to limit the fee it awarded for that reason. Therefore, the order setting the fee was vacated and the case remanded for entry of an order setting a proper fee.

Res Ipsa Loquitur Not Applicable In Medical Malpractice Case

Betty Wright underwent spinal surgery at WakeMed and was discharged to its REHAB unit, accompanied by an order that mistakenly included Xanax, Geodon, and Lithium in her list of prescribed medications. Claiming that taking them caused her to experience somnolence and lethargy for several days, she sued the hospital, her doctor, and his physician's assistant. The defendants denied negligence and moved to dismiss on multiple grounds, including the absence of a Rule 9(j) certification that Wright's medical records had been reviewed by a person reasonably expected to qualify as an expert under Rule 702 who was willing to testify that the treatment she received did not comply with the applicable standard of care. The trial court granted defendants' motion and Wright appealed.

On December 31, in ***Wright v. WakeMed***, the Court of Appeals affirmed. While it agreed with Wright that a Rule 9(j) certification would not be necessary if a medical malpractice complaint "alleges facts establishing negligence under the existing common law doctrine of *res ipsa loquitur*," that doctrine did not apply in this case. Quoting ***Sharp v. Wyse***, 317 N.C. 694 (1986), the Court held that "*res ipsa loquitur* applies when (1) direct proof of the cause of an injury is not available, (2) the instrumentality involved … is under the defendant's control, and (3) the injury is of the type that does not ordinarily occur in the absence of some negligent act or omission." Plaintiff may not rely on *res ipsa* if there is "direct evidence of the reason … [she] sustained the injury for which … she seeks relief." Since Wright "explicitly alleged that she was injured in a specific manner by a specific act of negligence," *res ipsa* could not form the basis for her claim.

Furthermore, the mere allegation of a negligent act - in this case, the inaccurate copying of Wright's list of medications when she was transferred to the rehabilitation unit - "does not suffice to establish a valid negligence-based claim for the recovery of damages." Also required is "proof that the negligent act … resulted in the injury for which the plaintiff seeks redress." In this case, like ***Smith v. Axelbank***, ___ N.C. App. ___ (2012), "a jury would not be able to determine whether Plaintiff's injury resulted from the ingestion of Xanax, Geodon, and Lithium without having the benefit of expert witness testimony, since a lay juror would not necessarily know what these medications are, how they affect the human body, and how they might be expected to affect Plaintiff specifically." Therefore, the trial court properly dismissed Wright's complaint.

Gross Negligence and IIED Claims Reinstated

Before they separated, Stephanie Needham and Roy Price engaged in a long-term domestic relationship that produced three minor children. At 1:25 am on November 20, 2009, Needham and the children were occupying a house owned by Price, when he surreptitiously entered it by way of the garage and attic. As he attempted to descend to the hallway below by unfolding an attic ladder, it struck and injured Needham in the head, neck, and shoulder.

Asserting claims of negligence, premises liability, negligent infliction of emotional distress (NIED), intentional infliction of emotional distress (IIED), gross negligence, and punitive damages, Needham sued Price in her own name and as guardian *ad litem* for the children, alleging that they were awakened by noise in the attic, observed her being struck by the ladder, "recoiled in terror," and "watched in shock as

their father descended … shouting obscenities at their fallen mother, causing severe emotional distress." Price responded by pleading parent-child immunity and moving for summary judgment on the children's claims. The trial court granted his motion and Needham appealed.

On January 20, in ***Needham v. Price***, the Court of Appeals found that since the trial court's order did not completely dispose of the case, Needham's appeal was interlocutory. But, it also found that an immediate appeal of an interlocutory order is appropriate if it "affects a substantial right," and "the right to avoid the possibility of two trials on the same issues can be such a substantial right." Because the claims brought by Needham and her children arose from the same set of facts, trying them separately could result in "an inconsistent jury decision on overlapping issues," so the Court agreed that the trial court's order affected a substantial right, entitling plaintiffs to an immediate appeal.

Turning to the merits of their appeal, the Court agreed that the doctrine of parent-child immunity barred the minor children's claims for ordinary negligence, but found merit in Needham's argument that the immunity defense has no application to claims based on "willful and malicious acts." Therefore, the trial court erred in dismissing the children's IIED claim, since their forecast of evidence, when considered "in the light most favorable to [them as] the non-moving party," as it is required to do in determining whether to grant summary judgment, was sufficient to satisfy the three essential elements of an IIED claim: "(1) extreme and outrageous conduct, (2) which is intended to cause and does cause (3) emotional distress."

The Court also found that plaintiffs' complaint pled all of the essential elements of gross negligence, *i.e.*, duty, breach of duty, proximate cause, injury, and wanton conduct. Although the duty element "presupposes the existence of a legal relationship between the parties by which the injured party is owed a duty by the other," it was present in this case because "[p]arents … have an affirmative legal duty to protect and provide for their minor children." Because "the time and nature of defendant's entry into the residence, his conduct towards plaintiff in the presence of the minor children …, and … [their] resulting injuries forecast evidence sufficient to raise genuine issues of material fact as to each essential element of a claim for gross negligence," the Court reversed the dismissal of not only the minor plaintiffs' IIED claim, but their gross negligence and punitive damages claims as well.

Failure to Mitigate Damages Defense Not Raised At Trial

Jeanne Clark and Richard Bichsel agreed that each would pay half the rent for an apartment they leased from a third party. After Bichsel paid his share for four months, he moved out and notified the leasing agency that Clark, her three children, and their dog would continue to live in the apartment.

Clark paid the remainder of the rent owed under the lease and then sued Bichsel in Small Claims Court. The magistrate entered judgment in her favor, but Bichsel appealed and the case went to arbitration, where the arbitrator ruled for Bichsel, finding that he owed nothing. Clark then appealed to district court, which heard the case without a jury and entered a judgment for her. Bichsel appealed.

On January 6, in ***Clark v. Bichsel***, the Court of Appeals determined that the district court's findings of fact regarding the parties' contract to split the rent were supported by competent evidence and binding on appeal. As for Bichsel's contention that, by not attempting to renegotiate the lease after he moved out, Clark failed to mitigate her damages, the Court found that he did not make that argument at trial and "[a] contention not raised in the trial court may not be raised for the first time on appeal."

At the same time, the Court agreed with Bichsel that it was error for the trial court to direct him to

make payment on the judgment within 60 days. N.C.G.S. § 1-302 provides that a money judgment may be enforced by execution, but does not authorize entry of an order directing payment within a specified number of days, so that portion of the trial court's judgment was vacated.

Unjust Enrichment Award Set Aside

When Vikki and Clarence Butler separated after twenty years of marriage, they signed a Separation Agreement that was later incorporated in a divorce judgment from the district court, which also entered a "qualified domestic relations order" (QDRO).

The Separation Agreement provided Vikki with a "marital interest" in Clarence's future retirement benefits as a Federal Civilian Employee at the Norfolk Naval Shipyard. Both the QDRO and the Civil Service Retirement Spouse's Equity Act of 1984 conditioned Vikki's entitlement to those benefits on her filing a copy of the QDRO with the United States Office of Personnel Management ("OPM"). However, she and her attorney failed to file the QDRO with OPM at the time.

Clarence retired in November 2009 and OPM started paying him his entire retirement benefit, without deducting anything for Vikki's "marital interest" under the Separation Agreement. Two years later, after discovering Clarence's retirement, she finally filed the QDRO with OPM and began receiving her share of the retirement benefit. She also filed a Motion in the Cause in domestic court, seeking specific performance of the Separation Agreement and damages for Clarence's failure to inform her that he had been receiving retirement benefits for the past 24 months.

Clarence admitted receiving unreduced benefits from OPM, but claimed that the Separation Agreement did not require him to do anything about Vikki's share, whereas both federal law and the QDRO required her to submit the QDRO to OPM. She conceded that it was her obligation to submit the QDRO, but claimed that she mistakenly thought her attorney submitted it at the end of the divorce proceeding in 1994. The trial court eventually entered judgment in her favor, finding that Clarence was "unjustly enriched by receiving 24 months of unreduced federal retirement pension when [Vikki] received nothing." He appealed.

On January 20, in ***Butler v. Butler***, the Court of Appeals reversed. Quoting form the Supreme Court's decision in ***Booe v. Shadrick***, 322 N.C. 567 (1988), it found unjust enrichment to be "a claim in quasi contract" or "a contract implied in law" and held that "the mere fact that one party was enriched, even at the expense of the other, does not bring the doctrine … into play." Rather, there are five elements to a claim for unjust enrichment: "First, one party must confer a benefit upon the other party…. Second, the benefit must not have been conferred … in a manner that is not justified in the circumstances…. Third, the benefit must not be gratuitous…. Fourth, the benefit must be measurable…. Last, the defendant must have consciously accepted the benefit."

Relying on ***Holmes v. Solon Automated Services***, ___ N.C. App. ___ (2013) (see *North Carolina Civil Litigation Reporter*, December 2013, p. 10), Clarence argued that unjust enrichment did not apply in this case because of Vikki's "failure to meet the terms and conditions agreed upon," and the Court agreed: "as in ***Holmes***, Defendant's injury here was caused by her own failure to satisfy an express condition precedent – namely, filing a copy of the QDRO with OPM." The trial court's "attempt to fashion an equitable remedy" was understandable, but erroneous, because "equity will not afford relief to those who sleep on their rights" or lose them due to "want of diligence which may fairly be expected from a reasonable and prudent man."

Because all five of the elements of unjust enrichment must be present for the doctrine to

apply and there was "no suggestion that Defendant's failure to file a copy of the QDRO with OPM was done intentionally or with any expectation of benefit to Plaintiff or remuneration to herself," the Court found that Vikki "cannot satisfy the first required element … for unjust enrichment." Likewise, the fifth element was also lacking "because there is no evidence that Plaintiff consciously received the benefit." Therefore, the trial court erred in finding as a fact and concluding as a matter of law that Clarence was unjustly enriched, and its order awarding Vikki back retirement benefits was vacated.

Additional Opinions

On December 31, in ***Feltman v. City of Wilson***, a wrongful discharge action in which the trial court granted defendants' Rule 12(b)(6) motion to dismiss plaintiff's claim that her constitutional rights to freedom of speech and assembly had been violated, the Court of Appeals held that it had jurisdiction of plaintiff's appeal, even though it was interlocutory, because the order of dismissal was a final judgment "as to one or more but fewer than all of the claims" and the trial court certified under Rule 54(b) that there was "no just reason" to delay the appeal. The Court then found that it was "inconsistent with the concept of notice pleading embodied in Rule 8(a)" for the trial court to dismiss plaintiff's complaint on grounds that she failed to plead the "requisite 'but for' standard" for claiming a violation of her constitutional rights. While it agreed that, to establish the causation element of a valid claim, plaintiff had to prove that the speech at issue "was the 'motivating' or 'but for' cause" of the employment action taken against her, the Court found that the allegations in her complaint met the "concept of notice pleading as provided for in our Rules of Civil Procedure." Therefore, the trial court erred in dismissing her complaint.

On January 20, in ***Crite v. Bussey***, a motor vehicle negligence action brought by Robin Crite against Timothy Bussey, Crite resorted to service by publication after her original summons and an alias and pluries summons were both returned undelivered. Bussey's motion to dismiss for insufficient process, insufficient service of process, and lack of personal jurisdiction was denied by the trial court and he appealed, contending that N.C.G.S. § 1-277(b) provides an exception to the general rule against interlocutory appeals in cases of an "adverse ruling as to the jurisdiction of the court over the person or property of the defendant." However, the Court of Appeals found that the statute did not apply. Citing ***Love v. Moore***, 305 N.C. 575 (1982), it held that "motions challenging only the sufficiency of service of process, and not … the existence of sufficient 'minimum contacts' with the State, are not immediately appealable under § 1-277(b)." Therefore, the Court lacked jurisdiction and Bussey's appeal was dismissed.

WORKERS' COMPENSATION

Claim Filed More Than Two Years After Accident Upheld

Charles Clark, a resident of Florida, was supervising the construction of apartment complexes for Summit Contractors Group in Greensboro when he injured his shoulder on August 5, 2009. He reported his injury to Summit the next morning and filed a "First Report of Injury or Illness" with the Florida Division of Workers' Compensation a week later.

After being treated by a Greensboro chiropractor, Clark returned home to Florida, where he underwent additional treatment and began receiving indemnity and medical benefits under Florida law. Summit's last payment of medical compensation was made on November 14, 2012, some eleven months after Clark filed a Form 18 "Notice of Accident" with the North Carolina Industrial Commission.

Summit's denial of the claim on grounds that Clark failed to comply with the two-year statute

of limitations contained in N.C.G.S. § 97-24 led to a hearing before a deputy commissioner, an opinion and award, and an appeal to the Full Commission, which agreed with the defense and denied the claim. Clark appealed.

On December 31, in ***Clark v. Summit Contractors Group, Inc.***, the Court of Appeals agreed that the timely filing of a claim is a condition precedent to the right to receive compensation, and failure to timely file bars Commission jurisdiction under N.C.G.S. § 97-24, which provides that the right to compensation "shall be forever barred" unless the injured employee files a claim (1) within two years of the accident or (2) "within two years after the last payment of medical compensation when no other compensation has been paid." However, it found that although Clark's North Carolina claim was not filed within two years of the date of injury, it *was* filed within two years of Summit's last payment of medical compensation in Florida.

That raised the question whether paying a medical bill in Florida constitutes payment of "medical compensation" under North Carolina's Workers' Compensation Act. Citing ***McGhee v. Bank of America Corp.***, 173 N.C. App. 422 (2005), in which payments to medical providers in Virginia were found to meet the definition of "medical compensation" in N.C.G.S. § 97-2(19), the Court found "no basis for defendants' contention that 'medical compensation' only includes payments made in a matter pending before the North Carolina Industrial Commission." Since "[n]othing in the definition [of 'medical compensation'] limits the geographical locale of the medical treatment to North Carolina," the Court found no merit in defendants' contention that "medical compensation" only includes payments for medical treatment "made pursuant to the judgment or umbrella of the North Carolina Industrial Commission."

The Court then considered the question of whether the benefits Clark received in Florida qualified as "other compensation," because if they did, "plaintiff would be unable to satisfy the second element under section 97-24(a)(ii)." And, again, it looked to ***McGhee v. Bank of America***, in which the defendant bank argued that the short-term disability benefits it paid to plaintiff constituted "other compensation," but the Court found instead that they were paid *in lieu of* workers' compensation, not pursuant to the Workers' Compensation Act. Applying the holding in ***McGhee*** to the present case, the Court held that "since the workers' compensation benefits plaintiff received in Florida were … 'not made payable to [him] pursuant to [North Carolina's] Workers' Compensation Act,' … they do not qualify as 'compensation,' as defined in section 97-2(11) (2013), or 'other compensation,' as defined in ***McGhee***, for purposes of N.C. Gen. Stat. § 97-24(a)(ii)." Therefore, Clark's Form 18, although filed more than two years after the date of injury, was timely, and it was error for the Commission to deny his claim.

Employer Credited with Disability Benefits Paid by Insurer

From 2001 to April 2011, long-time Ingersoll Rand employee Jerry Seamon worked as a machinist, balancing air compressor units to customer specifications. To avoid damaging them, he had to disassemble each unit gently. While his coworkers used a rubber mallet to dislodge the unit's parts, he often used the palms of his hands.

Seamon began experiencing pain in his hands in late 2010, and his symptoms gradually worsened. By April 2011, his nails were turning black and he was in extreme pain. His primary care doctor referred him to an orthopedic specialist, Dr. Scott Brandon, who referred him to a hand surgeon, Dr. Louis Koman, who referred him to a vascular surgeon, Dr. Matthew Edwards, for an arteriogram. Dr. Edwards provided thrombolytic therapy to remove clots in Seamon's fingers and Dr. Koman performed multiple operations,

including amputations of his left index and middle fingers.

After Seamon reached maximum medical improvement on November 16, 2011, Dr. Koman expressed the opinion that his condition was due to use of the palms of his hands to dislodge the air compressors' rotatory assemblies. He also assigned thirty percent disability ratings to each hand, imposed permanent work restrictions, and advised Seamon to avoid physically stressing his hands.

Ingersoll Rand provided its employees with employer-funded short-term disability benefits, paid the full premium for a long-term disability plan that allowed them to collect up to forty percent of their regular earnings if they became disabled, and permitted them to increase their coverage to sixty percent of their regular earnings by purchasing additional coverage, which Seamon elected to do at a cost of approximately $10.00 per month.

In June 2011, he filed a Form 18, claiming that his condition was work-related. Ingersoll Rand's insurer arranged for an ergonomic evaluation of the machinist position and retained a vascular surgeon, Dr. Frank Arko, to provide a causation opinion. After reviewing Seamon's medical records, the findings of the ergonomic study, and a video of a machinist performing his job duties, Dr. Arko concluded that Seamon's job did not cause his condition, nor place him at an increased risk of developing it as compared to members of the general public. But, Dr. Brandon disagreed, being of the opinion that Seamon's job placed him at an increased risk developing bilateral peripheral vascular disorder.

The Commission found Seamon's testimony credible, gave greater weight to the findings and causation opinion of Dr. Koman, concluded that Seamon was at an increased risk of developing a bilateral peripheral vascular disorder as compared to members of the general public, and held that his condition was caused or significantly contributed to by his work as a machinist. It found him totally disabled and entitled to TTD benefits through November 15, 2011, but capable of some work thereafter, and awarded an additional 120 weeks of benefits for permanent partial disability beginning on November 16, 2011. Both sides appealed.

On December 31, in ***Seamon v. Ingersoll Rand***, the Court of Appeals held that the findings of fact challenged by the defendants were supported by the opinions of Drs. Koman and Brandon and, therefore, binding on appeal. And, those findings supported the Commission's conclusion that Seamon satisfied the ***Rutledge v. Tultex Corp.***, 308 N.C. 85 (1983) test for a compensable occupational disease, *i.e.*, proof that his condition was "(1) characteristic of … [his] occupation …; (2) not an ordinary disease of life to which the public … is equally exposed …; and (3) … [there was] a causal condition between the disease and … [his] employment."

As for Seamon's argument that the Commission erred in cutting off his award of temporary total disability benefits as of November 15, 2011, the Court found that he failed to satisfy the ***Hilliard v. Apex Cabinet Company***, 305 N.C. 593 (1982) test for disability, *i.e.*, proof that he was "incapable of earning [his] pre-injury wages in either the same or any other employment," as he "presented no evidence that he made reasonable, yet unsuccessful efforts to obtain employment" after Dr. Koman released him to return to work with restrictions. The Court also agreed with the Commission that Seamon failed to prove that "it would have been futile to seek other employment due to … preexisting conditions such as age, education, or inexperience." Therefore, it concluded that he failed to satisfy the second and third prongs of the ***Russell v. Lowes Product Distribution***, 108 N.C. App. 762 (1993) criteria for establishing total disability: "(2) … evidence that he is capable of some work, but … after a reasonable effort on his part, been unsuccessful in his effort to obtain employment … [and] (3) … evidence that he is capable of some work but that it would be futile because of

preexisting conditions … to seek other employment."

The Court also considered, but ultimately rejected, Seamon's argument that Ingersoll Rand was not entitled to a credit for the short- and long-term disability benefits he received before his workers' compensation claim was resolved. Acknowledging the "laudable purpose" of the two statutes that allow for a credit, N.C.G.S. § 97-42 and N.C.G.S. § 97-42.1, the Court found that they "encourage voluntary payments to workers while their claims to compensation are being disputed and … are receiving no wages." Although N.C.G.S. § 97-42 limits such credits to *employer-funded* salary continuation, disability or other income replacement plans, ***Gray v. Carolina Freight Carriers***, 105 N.C. App. 480 (1992) limited the credit authorized by the statute to "payments made by the employer, not to … other payments the employee may receive from outside sources," and the disability benefits Seamon received were "distributed" by CIGNA, the Court nevertheless found that a credit was owed in this case; it was sufficient that Ingersoll Rand paid the full premium to CIGNA.

Nor was the Court persuaded that Ingersoll Rand's disability plan was not fully employer-funded because Seamon purchased additional coverage that increased his benefit from forty to sixty percent of his regular earnings. Rather, "an insurance plan is considered 'employer-funded' when the employer pays the entire premium to fund the requisite amount of coverage the employer elects to provide. The fact that an employee purchases additional coverage beyond that which the employer offers has no bearing on whether the plan is employer-funded." Therefore, there was no error in the Commission's limited award of benefits.

The full text of the appellate decisions summarized in this newsletter can be found at www.nccourts.org.

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