IN THE SUPREME COURT OF MISSOURI

SC96513

ANDREW DICKEMANN,
Appellant,

v.

COSTCO WHOLESALE CORPORATION.
Respondent.

Appeal from the Labor and Industrial Relations Commission
Injury Number 10-059484
On Transfer from the Missouri Court of Appeals – Eastern District
Appeal Number ED105266

APPELLANT'S SUBSTITUTE BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

JURISDICTIONAL STATEMENT

Employee/Appellant appeals from the refusal of the Missouri Labor and Industrial Relations Commission (herein after "Commission") to approve a Stipulation for Voluntary Settlement and Agreement to Commute Award to resolve a permanent total disability award for a one time lump-sum payment under Chapter 287 of the Missouri Workers' Compensation Act. This case arises out of an Employee's occupational injury which occurred in St. Louis County, Missouri and as such was originally venued within the Missouri Court of Appeals - Eastern District pursuant to §477.050 RSMo.

Subsequent to the opinion handed down by the Missouri Court of Appeals – Eastern District bearing appeal number ED105266 on May 23, 2017, Appellant and Respondent jointly and timely filed an Application for Transfer to the Missouri Supreme Court with the Court of Appeals pursuant to Rule 83.02. On June 14, 2017 the Missouri Court of Appeals – Eastern District granted transfer pursuant to the joint request. This Court therefore has jurisdiction pursuant to *Mo. Const. art. V, sec. 10.*

STATEMENT OF FACTS

On July 30, 2010, Appellant was injured while in the course and scope of his employment for Respondent, such injury occurring in St. Louis County, Missouri. (LF 2) On December 11, 2013, Appellant's Claim for Compensation proceeded to hearing before an Administrative Law Judge of the Missouri Division of Workers' Compensation. (LF 4) On March 27, 2014, the Administrative Law Judge awarded Appellant weekly permanent total disability benefits of $799.11 beginning March 1, 2013 and continuing for as long as provided by law. (LF 3) In addition, said Award provided for a lien in the amount of 25% of all payments thereunder in favor of Appellant's attorney James Krispin for necessary legal services rendered to Appellant. (LF 3) No Application for Review was filed by either party, and the Award became final in April, 2014 (LF 10).

On November 30, 2016, after Appellant had received weekly benefits for over three and a half years, Appellant and Respondent voluntarily entered into and filed with the Commission their Stipulation for Voluntary Settlement and Agreement to Commute Award (hereinafter "Stipulation and Agreement"), pursuant to the terms of which the parties agreed to fully and finally settle Appellant's award for lifetime disability benefits for a one-time lump sum payment by Respondent to Appellant in the sum of $400,000.00 (LF 10-12). In the Stipulation and Agreement, Appellant acknowledged that he understood his rights and benefits under Missouri law and under said Stipulation and Agreement, that said Stipulation and Agreement was not the result of undue influence or fraud and that Appellant voluntarily agreed to accept the terms of the Stipulation and Agreement. (LF 10-12) Both Appellant and

Respondent were represented by counsel, who were both also signatories to the Stipulation and Agreement. (LF 12) In addition, the parties agreed that the net lump sum recovery of $300,000.00 after deduction of attorney's fees would be paid for permanent and total disability prorated over employee's life expectancy of 1,092 weeks pursuant to §287.250.9 RSMo. (LF 11). Finally, the Appellant and Respondent respectfully requested the Commission to approve the Stipulation and Agreement. (LF 12).

On January 5, 2017, the Commission issued its Order denying its approval of the Stipulation and Agreement. (LF 13-14). Appellant then filed his Notice of Appeal, and the case was transferred to the Missouri Court of Appeals – Eastern District. On May 23, 2017, the Court of Appeals – Eastern District issued its opinion affirming the decision of the Commission which denied approval of the Stipulation and Agreement. (App 1-14) Thereafter, the parties joined in requesting transfer to this Court due to, among other reasons, a split between the Eastern and Western District Courts of Appeals. The Eastern District granted the parties' joint application for transfer to this Court on June 14, 2017.

POINT RELIED ON

THE LABOR AND INDUSTRIAL RELATIONS COMMISSION ERRED IN DENYING ITS APPROVAL OF THE STIPULATION FOR VOLUNTARY SETTLEMENT AND AGREEMENT TO COMMUTE AWARD BECAUSE THE COMMISSION MISINTERPRETED AND MISAPPLIED THE LAW AND EXCEEDED ITS AUTHORITY UNDER §287.390.1 RSMo. AND CONTROLLING CASE LAW IN THAT MISSOURI STATUTES AND CONTROLLING CASE LAW REQUIRE THE COMMISSION TO APPROVE VOLUNTARY SETTLEMENTS SO LONG AS THE PARTIES AGREE THAT SUCH SETTLEMENT IS NOT THE RESULT OF UNDUE INFLUENCE OR FRAUD, AND THAT APPELLANT UNDERSTOOD HIS RIGHTS AND BENEFITS AND THE CONSEQUENCES OF THE SETTLEMENT AND VOLUNTARILY ACCEPTED THE TERMS OF THE AGREEMENT.

Hinkle v. A.B. Dick Company 435 S.W.3d. 685 (Mo. App. W.D. 2014)

Nance v. Maxon Electric, Inc. 395 S.W.3d. 527 (Mo. App. W.D. 2012).

Hargis v. JLB Corp. 357 S.W.3d. 574, 587 (Mo. Banc 2001)

Reichert v. Board of Educ. of City of St. Louis 217 S.W.3d. 301 (Mo. Banc 2007)

§287.390 RSMo.

ARGUMENT

THE LABOR AND INDUSTRIAL RELATIONS COMMISSION ERRED IN DENYING ITS APPROVAL OF THE STIPULATION FOR VOLUNTARY SETTLEMENT AND AGREEMENT TO COMMUTE AWARD BECAUSE THE COMMISSION MISINTERPRETED AND MISAPPLIED THE LAW AND EXCEEDED ITS AUTHORITY UNDER §287.390.1 RSMo. AND CONTROLLING CASE LAW IN THAT MISSOURI STATUTES AND CONTROLLING CASE LAW REQUIRE THE COMMISSION TO APPROVE VOLUNTARY SETTLEMENTS SO LONG AS THE PARTIES AGREE THAT SUCH SETTLEMENT IS NOT THE RESULT OF UNDUE INFLUENCE OR FRAUD, AND THAT APPELLANT UNDERSTOOD HIS RIGHTS AND BENEFITS AND THE CONSEQUENCES OF THE SETTLEMENT AND VOLUNTARILY ACCEPTED THE TERMS OF THE AGREEMENT.

Standard of Review

This Court reviews the Commission's decision to determine if it is supported by competent and substantial evidence on the whole record. MO. CONST. art.V, §18. The Court shall review only questions of law and may modify, reverse, remand for rehearing, or set aside the award only if: (1) the Commission acted without or in excess of its powers; (2) the award was procured by fraud; (3) the facts found by the Commission do not support the award; or (4) there was not sufficient competent evidence in the record to warrant the making of the award. §287.495.1 RSMo. 2000. *Johme v. St. John's Mercy Healthcare,* 366 S.W.3d.

504, 509 (Mo. 2012). The appellate court is not bound by the Commission's interpretation or application of the law; therefore, no deference is afforded its interpretation of a statute. *Hinkle v. A.B. Dick Company*, 435 S.W.3d. 685, 688 (Mo. App. W.D. 2014) citing *Nance v. Maxon Elec., Inc.*, 395 S.W.3d. 527, 532 (Mo. App. W.D. 2012) *("Nance I")*. Thus, this Court reviews decisions of the Commission that are clearly interpretations or applications of law for correctness without deference to the Commission's judgment. *McDermott v. City of Northwoods Police Dept.*, 103 S.W.3d. 134, 138 (Mo. App. E.D. 2002). Nothing requires this Court to review the evidence and all reasonable inferences drawn from the evidence in the light most favorable to the Commission's decision. *Johme, supra* at 509.

Legal Analysis

Decision of the Commission

In their joint Stipulation for Voluntary Settlement and Agreement to Commute Award, (herein after "Stipulation and Agreement"), the parties herein carefully crafted the agreement to reflect compliance with §287.390 and the Western District's analysis set forth in *Hinkle v. A.B. Dick Company, supra* and *Nance v. Maxon Electric, Inc., (Nance I) supra.* In fact, the parties specifically referenced the holdings in those cases at paragraph 5 of the Stipulation and Agreement. While the Commission's Order in this case references the decision in *Nance I*, it is silent with respect to the controlling decision set forth in *Hinkle.* As acknowledged by the Western District in *Hinkle*, the Commission is bound by the doctrine of stare decisis. "The doctrine of stare decisis directs that, once a Court has laid down a principle of law applicable to a certain state of facts, it must adhere to that principle, and apply it to all future

cases, where facts are substantially the same; regardless of whether the parties and property are the same." *Hinkle v. A.B. Dick Company* at 688 citing *Rothwell v. Dir. of Revenue*, 419 S.W.3d. 200, 206 (Mo. App. W.D. 2013). Under that doctrine, "a Court follows earlier judicial decisions when the same point arises again in litigation and where the same or analogous issue was decided in an earlier case, such case stands as authoritative precedent unless and until it is overruled." *Id.* Nevertheless, the Commission chose to ignore the only controlling case law laying down a principle of law applicable to the facts of this case, set forth in *Nance I* and *Hinkle.*

In the instant case, the Commission reasoned that (1) the settlement between the parties was not reached to resolve any pending claim or dispute between the parties, (2) the settlement, which proposes that Respondent pay only 68% of the present value of the award, was not in accordance with Appellant's rights under Chapter 287 RSMo., and (3) that the proposed lump sum of $400,000.00 did not equal the present value of the permanent total disability payments due under the award, and the parties did not allege and show unusual circumstances warranting departure from the normal method of payment. However, these are identical to the issues analyzed by the *Hinkle* court.

While *Hinkle* dealt with lifetime death benefits for a surviving spouse, and the instant case deals with permanent total disability benefits, the distinction is inapposite for purposes of this appeal. All parties in both cases just wanted to settle their disputes between themselves. As set forth in *Hinkle,* where the parties enter into a voluntary agreement to commute a lifetime benefits award into a one-time lump sum, and those parties agree and

stipulate to the lump sum amount, with further agreement that the settlement is not the result of undue influence or fraud, and that appellant understands his rights, benefits, and the consequences of the settlement and voluntarily accepts the terms of the agreement, the Commission must approve the settlement under §287.390.1 RSMo. *Hinkle v. A.B. Dick Company, supra* at 689. Accordingly, the Commission erred as a matter of law in not approving the settlement herein.

The analysis and argument advanced by the parties in *Hinkle* which is largely set forth herein is similarly persuasive in this case, given the nearly identical nature of the issue on appeal.

In *Nance v. Maxon Electric, Inc.* 395 S.W.3d 527 (Mo. App. W.D. 2012), *(Nance I)* the Western District identified the issues the Commission must address in approving or denying a settlement which commutes a previous Award to a lump sum. In a contested commutation case, §287.530 RSMo. sets forth the issues the Commission must consider in approving or denying a request for commutation. *Nance I* at 536. This would include consideration of the commutable/present value of future installments. §287.530 RSMo.

However, in an **uncontested** commutation case where the parties have reached a voluntary commutation settlement agreement, the Commission is to review the proposed settlement agreement under §287.390.1 RSMo. which governs approval or disapproval of voluntary settlements. *Nance I, supra* at 537. In other words, once the Commission is presented with the parties' joint settlement stipulation or agreement, the Commission is bound by the authority granted it in §287.390 RSMo. which governs its authority in

approving or disapproving voluntary settlements. *Id* at 537.

§287.390.1 RSMo. contains five relevant directives concerning the approval of settlements:

1). Employee or dependents must not waive their rights under Chapter 287;

2). The settlement must be in accordance with the rights of the parties under Chapter 287;

3). The Settlement must not be the result of undue influence or fraud;

4). The employee fully understands his or her rights and benefits; and

5). The employee must voluntarily agree to accept the terms of the agreement.

In this case, as set forth in the Stipulation and Agreement, Appellant attested that he understood his rights and benefits under Missouri law, that his agreement to settle was not the result of undue influence or fraud, and that he voluntarily agreed to accept the terms of the settlement. In its decision, the Commission did not dispute the knowing and voluntary nature of the proposed settlement agreement nor did it refuse to approve the settlement because of any issues with respect to item numbers 3, 4 or 5 above.

Rather, in this case the Commission construed §287.390.1 RSMo. to prevent the parties' voluntary settlement because the settlement amount did not equal the present value of the lifetime payout of the original award as set forth in §287.530 RSMo., postulating that the parties identify no "dispute" regarding the availability of modification under §287.241, §287.470, or §287.530 RSMo., resulting in a failure to trigger their settlement authority under §287.390 RSMo.

Indeed, the settlement in this case is not disputed or contested by the employee, the employer, or the employer's insurer as all of the parties petitioned the Commission to approve their settlement agreement. As a voluntary settlement between all of the parties, §287.530 RSMo. does not apply to the parties' settlement in this case. *Nance I, supra* at 536-537. Simply put, §287.390.1 RSMo. governing approval of voluntary settlements does not mandate "present value" settlements. The provision which requires the Commission to consider present value calculations (§287.530 RSMo.) governs *contested* requests for commutation – not voluntary settlements like the instant case. *Id.*

Perhaps if either appellant or respondent herein had moved for commutation of the award to a one time lump sum payment without the consent of the opposing party, the Commission would be required to consider present value of the disputed lump sum under §287.530 RSMo. That is not the case here. The 2005 amendments to the Workers' Compensation Statute had the effect of restricting the discretion of the Commission to reject a settlement agreement between the parties. *Nance I* at 538. This analysis was subsequently adopted by the *Hinkle* court when it followed the *Nance I* decision, holding that §287.390.1 mandates through the use of the word "shall" that the Commission approve a voluntary settlement so long as (1) it is not the result of undue influence or fraud; (2) the employee understands his rights and benefits; and (3) the employee voluntarily agrees to accept the terms of the agreement. *Nance I* at 538; *Hinkle* at 689.

There was no evidence before the Commission that either of the parties in this case were forced or coerced into signing the Stipulation and Agreement, nor that any party waived

any of their rights under the Workers' Compensation Law; nor was there anything before the Commission to indicate that there was any undue influence or fraud involved in the parties reaching their settlement agreement. On the contrary, the only evidence before the Commission was that Appellant was fully informed and understood his rights and benefits under Missouri law, that the voluntary settlement agreement was not the result of undue influence or fraud and that he specifically and voluntarily agreed to accept the terms of the agreement to commute his Award.

The specific language of §287.390.1 RSMo. makes it clear that the legislature intended for parties to claims to be able to enter into voluntary agreements to settle. There is no indication that the legislature ever intended for the present value considerations outlined in §287.530 RSMo. to be used to prevent voluntary settlements under §287.390.1 RSMo.

The parties' joint Stipulation and Agreement is governed by §287.390.1 RSMo. and was clearly, knowingly, and voluntarily made by the parties, as evidenced by their joint request to approve the Stipulation and Agreement. Accordingly, the Commission's decision is not in accordance with the rights of the parties under §287.390 RSMo. to settle this matter which requires the Commission to approve voluntary settlements. Actually, the Commission's decision in this case refuses to uphold the rights of the parties under Chapter 287 to voluntary settle this case. Section 287.390.1 RSMo. mandates that the Commission approve the joint Stipulation and Agreement of the parties, and this Court should now compel the Commission to approve.

The Commission also stated that under §287.390 RSMo., a settlement for less than

full present value is not in accordance with the rights of the parties because "…payment of a mere 68% of the present value of employee's final award…" would apparently constitute a waiver of a right to receive 100% of the present value of the final award. (LF 14). Accordingly, the Commission feels as though it has no authority to consider the Stipulation and Agreement for approval as a settlement under §287.390. *Id.* Indeed, the Eastern District in this case suggests that §287.390.1 contains an "inherent conflict" by requiring the Commission to approve settlements so long as the settlement is not the result of undue influence or fraud, the employee understands his or her rights and benefits, and voluntarily agrees to it, yet forbids the Commission from approving "any settlement which is not in accordance with the rights of the parties." *Slip Op. at 9 n. 5.* The perception of an inherent conflict could only be based upon an analysis that a proposed settlement for less than full present value is not "in accordance with the rights of the parties."

This interpretation of the requirement that a settlement be in accordance with the rights of the parties belies the accepted practice of how settlements are approved by the Division of Workers' Compensation and the Commission. It is common that in Workers' Compensation Claims for permanent total disability against the State's Second Injury Fund, the Treasurer (even in the clearest most indisputable claims for permanent total disability) will never offer more than $60,000.00 in lump sum settlements with no exceptions. The practice at the Division of the Workers' Compensation is to not only approve these settlements, but also to encourage them in mediation. Furthermore, there is never any type of hearing or record made as to the "true present value" of an employee's Claim for

Compensation when an Administrative Law Judge is presented with Stipulations for Compromise Settlement to determine whether a proposed settlement is "in accordance with the rights of the parties" without waiver of those rights pursuant to §287.390.1. Note that §287.390.1 requiring approval of settlements applies to Administrative Law Judges as well as the Commission. Apparently, the Division of Workers' Compensation, and by extension the Commission doesn't mind individuals "waiving their rights" by settling for a maximum amount of $60,000.00 (without any regard to analyzing true present value) when they are dealing with the State's Second Injury Fund, but only focus their concern (and thereby prevent these individuals from settling) when they are dealing with injured employees (and other deserving claimants) who have been put through the paces of proving their claims all the way through to a final award.

In its Order, the Commission also points out that the parties did not identify a "dispute" regarding the availability…" of one of the statutory provisions permitting modification of a final award." (LF 14). However, there is no specific requirement contained within §287.390 RSMo. that the parties identify any particular "dispute." As acknowledged by the court below, strict construction of this statue means that a "statute can be given no broader application than is warranted by its plain and unambiguous terms." *Slip Op. at 8-9* citing *Harness v. S. Copyroll, Inc.* 291 S.W.3d. 299, 303 (Mo. App. S.D. 2009). However, those statutory provisions found at §287.241, §287.470, and §287.530 RSMo. are not exclusive to agreements of settlement or compromise of "dispute[s] or claim[s]" under §287.390. The fact that "…the parties hereto have agreed to settle the future lifetime benefits

to a commuted lump sum of $400,000.00…" as set forth in paragraph 5 of the Stipulation and Agreement *implies* that there was a dispute as to how much money this claim is worth. Clearly, the only way to determine with certainty the actual value of a claim for lifetime benefits is to wait until the claimant dies, and then add up all of the payments made up to that point. An effort to determine the present value of that number requires analysis of a number of variables including the use of life expectancy projections (which are routinely amended), the claimant's overall health, and the possibility that the employee may be "restored to his regular work or its equivalent" pursuant to §287.200.3 RSMo. Obviously, to arrive at an agreed lump sum amount, the parties hereto negotiated the agreement in consideration of these and other variables. Every "settlement" originates with some form of dispute that is being resolved by that settlement.

Settlements are encouraged under the law. *Hancock v. Shook* 100 S.W.3d. 786, 799 (Mo. Banc 2003). This applies in Workers' Compensation Claims as well. *Grubbs v. Treasure of Missouri as Custodian of the Second Injury Fund* 298 S.W.3d. 907, 911 (Mo. App. E.D. 2009).

Opinion of the Eastern District

The decision of the Eastern District in this matter affirmed the decision of the Commission under a strict construction statutory analysis. In so doing, the Eastern District explicitly agreed that Appellant's argument is consistent with the *Nance I* and *Hinkle* decisions, yet declined to follow the Western District's holdings in those cases because, in

their opinion, *Nance I* and its progeny fail to correctly interpret Sections 287.390 and 287.530 RSMo. *Slip Op. at 8*. The court then set forth a separate analysis of §287.390 and §287.530 after stating various principles of statutory construction.

In its analysis of §287.390 RSMo., the opinion holds that "§287.390 expressly, plainly, and unambiguously restricts its application to '[p]arties to claims.' " *Slip Op. at 9*. However, that section of the statute as quoted by the opinion at page 4 opens with "Parties to claims hereunder may enter into voluntary agreements in settlement thereof, …" To conclude that the quoted language of §287.390 expressly, plainly, and unambiguously restricts its application to "parties to claims" implies that the quoted section *only* applies to "parties to claims." As quoted by the Eastern District at page 9 of its opinion, "[c]ourts cannot add words to a statute under the auspice of statutory construction." *Slip Op. at 9* citing *Peters v. Wady Industries, Inc.* 489 S.W.3d. 784, 792 n.6 (Mo. Banc 2016) (quoting *SW. Bell Yellowpages Inc. v. Dir. of Revenue*, 94 S.W.3d. 388, 390 (Mo. Banc 2002).)

To say that the phrase "parties to claims may enter into voluntary agreements in settlement thereof" only applies to parties to claims actually rewrites the statute to modify the class of parties to read "**only** parties to claims may enter into voluntary agreements in settlement thereof…". While the statute says that parties to claims may do so, it does not exclude any other class of parties who may wish to enter into settlement agreements. This point becomes clear when reading the entirety of §287.390.1 as set forth herein below:

1. Parties to claims hereunder may enter into voluntary agreements in settlement thereof, but no agreement *shall be valid, nor shall any*

> *agreement of settlement or compromise of any dispute or claim for compensation under this chapter* be valid until approved by an administrative law judge or the commission, *nor shall an administrative law judge or the commission approve any settlement which is not in accordance with the rights of the parties as given in this chapter. No such agreement shall be valid unless made after seven days from the date of the injury or death.* An administrative law judge, or the commission, shall approve a settlement agreement as valid and enforceable as long as the settlement is not the result of undue influence or fraud, the employee fully understands his or her rights and benefits, and voluntarily agrees to accept the terms of the agreement." [emphasis added to include portion not quoted by the Eastern District].

We see therefore that the opinion of the Eastern District has overlooked, by the use of ellipses, the portion of the statute referencing settlement or compromise of any ***dispute or claim***. If indeed the ability to settle was expressly, plainly, and unambiguously restricted to parties to claims, there would be no reference to parties to "disputes or claims." "[I]t is 'presumed that the legislature did not insert idle verbiage or superfluous language in a statute.' " *Hargis v. JLB Corp.* 357 S.W.3d. 574, 587 (Mo. Banc 2001). In fact, this is exactly what the Western District held in *Nance I* in analyzing a Commission finding that §287.390 only applies to settlements of the original claim and not settlements of a commutation of future PTD payments. There, the Western District held: "The section

specifically includes 'any agreement of settlement or compromise of *any dispute or claim for compensation.'* (emphasis added) If this section were only applicable to the settlement of an original claim, the language regarding 'any dispute' would be superfluous." *Nance I*, 395 S.W.3d at 534.

In its analysis, the Eastern District distinguishes between a "claim" and a "right to benefits," concluding that Appellant no longer possessed a "claim" because his case became final. *Slip Op. at 10*. However, the Workers' Compensation Act makes clear that all claims for payment of future benefits are never truly "final" because the Division of Workers' Compensation shall keep files in those cases open during the lifetime of the injured employee in order to allow the Commission to review the case should there be a question as to whether said employee has been restored to his regular work or its equivalent. §287.200.3 RSMo. Aside from that, the Commission also has statutory authority under §287.470 RSMo. to review "…at any time upon a rehearing after due notice…" an award to consider ending, diminishing, or increasing compensation based upon the ground of a change in condition. As pointed out by the Western District in *Nance I*: "With the ability to amend or change an award comes the ability of the parties to reach a settlement of the amendment or change, subject to the approval of the Commission under §287.390." *Nance I* at 535 citing *Roth v. J.J. Brouk & Co.*, 356 S.W.3d. 786 (Mo. App. E.D. 2011).

In fact, there have been cases in which "final awards" were litigated over the issue of continued payment of lifetime disability benefits. In these situations, the "right to benefits" was questionable thereby placing the employee in the position of *asserting* his right to

continued payment of benefits. This places such employee squarely within the definition of someone pursuing a "claim" as defined by the Eastern District in this case. *Slip Op. at 9-10.*

One such example was litigated in *SSM Health Care v. Hartgrove*, 456 S.W.3d. 467 (Mo. App. W.D. 2014). In that case, the employer sought to compel the employee (who had previously obtained a final award for permanent total disability benefits) to undergo a physical examination pursuant to §287.210.1 RSMo. ten years after the employee's award of lifetime benefits became final. The only reason to request such examination would be for the employer to present a request under §287.470 RSMo. to end the compensation based upon the ground of change in condition or a similar request under §287.200.3 RSMo. to suspend the lifetime payment under an argument that the employee has been restored to his[her] regular work as a result of physical rehabilitation.

Certainly, the parties in that case on appeal ten years after the entry of the "final award" were involved in a dispute which §287.390 RSMo. would not only allow them to enter into an agreement of settlement, but under which the Commission would be required to approve such settlement so long as the settlement was not the result of undue influence or fraud, the employee fully understood his or her rights and benefits, and voluntarily agreed to accept the terms of the agreement. Nevertheless, under the Eastern District's analysis, that situation could not be considered a "claim" thus depriving the Commission of the authority to approve any settlement under the statute. Construction of statutes should avoid unreasonable or absurd results. *Reichert v. Board of Educ. of City of St. Louis* 217 S.W.3d. 301, 305 (Mo. Banc 2007). In addition, the law favors a statutory construction that tends to avert an

unreasonable result. *Edwards v. Hyundai Motor America* 163 S.W.3d. 494 (Mo. App. E.D. 2005). When all parties to a claim or dispute wish to settle their differences, it is indeed unreasonable to prevent said parties from entering into agreements to settle.

CONCLUSION

For the reasons set forth herein, it is clear that the Commission erred by misinterpreting and misapplying the law and exceeded its authority in denying the joint Stipulation for Voluntary Settlement and Agreement to Commute Award. Accordingly, the decision of the Commission denying said request should be reversed and the case remanded to the Commission with directions that it approve the parties' joint Stipulation for Voluntary Settlement and Agreement to Commute Award in this matter.

Respectfully,

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PROOF OF SERVICE

The undersigned hereby certifies that the foregoing was filed via the court's electronic filing system this 2nd day of August, 2017, to:

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IN THE SUPREME COURT OF MISSOURI

ANDREW DICKEMANN,	)	
	)	
Appellant,	)	
	)	
v.	)	
	)	SC96513
	)	
COSTCO WHOLESALE CORPORATION,	)	
	)	
Respondent.	)	

CERTIFICATE

Pursuant to Rule 84.06(c), this is to certify that:

1. Rule 55.03 has been complied with, as this brief has been signed by:

   James G. Krispin #33991
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2. This brief conforms to the requirements of Rule 84.06(b);

3. The number of words contained in this brief is 5,383; and

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