

Summary of SC90131, *Joseph Banks v. Clint Zweifel, Treasurer of the State of Missouri, Custodian of the Second Injury Fund*

Appeal from the labor and industrial relations commission

Opinion issued Dec. 1, 2009

Attorneys: The fund was represented by Kareitha A. Osborne of the attorney general's office in St. Louis, (314) 340-7827. Banks was represented by Ellen E. Morgan of the Law Offices of Ellen E. Morgan in Webster Groves, (314) 918-7888, and Daniel J. Walkenhorst of The Law Offices of Daniel J. Walkenhorst in St. Louis, (314) 241-0055.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: The second injury fund appeals the labor and industrial relations commission's decision not to award the fund a subrogation interest in an injured worker's recovery against a third party. In a unanimous decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri affirms the commission's decision. Although the fund has an equitable subrogation interest in the worker's third-party recovery, that interest arises from common law and not the worker's compensation act; therefore, the proper venue for asserting its interest is the circuit court.

Facts: After being injured in a work-related automobile accident, Joseph Banks sued the other driver. Banks settled the case for \$100,000 and, after deducting attorney's fees and costs, was left with about \$54,900. Subsequently, an administrative law judge determined Banks was entitled to permanent total disability benefits from the second injury fund but did not award the fund a subrogation interest in Banks' recovery from the other driver. The labor and industrial relations commission affirmed that decision. The fund appeals.

AFFIRMED.

Court en banc holds: Although the fund has an equitable subrogation interest in a claimant's third-party recovery, its interest arises from common law, not from the workers' compensation act. As such, the commission has no authority to determine the fund's common-law subrogation interest in Banks' recovery from the other driver. The circuit court is the proper venue for the fund to assert a subrogation interest.