IN THE SUPREME COURT OF MISSOURI

S. C. No.: 94478

State of Missouri ex rel ISP Minerals, Inc.
Relator,

vs.

The Labor and Industrial Relations Commission,
Respondent.

REPLY BRIEF OF RELATOR ISP MINERALS, INC.

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I.

REPLY TO RESPONDENT'S ARGUMENT THAT THE COURT SHOULD QUASH ITS PRELIMINARY WRIT OF PROHIBITION.

Respondent asserts the Court should not make its Preliminary Writ Of Prohibition absolute, because it did not err in exercising jurisdiction over a "partial settlement agreement" and remanding the Claim for an evidentiary hearing regarding medical treatment. Specifically, Respondent contends Sections 287.390, 287.140.1, and 287.801 supported the issuance of its 8-14-14 Order, and it properly acted in regard to the "partial" Settlement Agreement between Michael Alcorn and ISP Minerals, which left future medical care open. (Res. Br.,9-11).

Respondent's jurisdictional argument is predicated on the erroneous belief that the Settlement Agreement between Michael Alcorn and ISP Minerals, which ALJ Lane approved on 1-8-09, was a "partial" settlement. (Res.Br.,11-24). If the Court gives the language of the Settlement Agreement its plain and unambiguous meaning, it becomes clear this is not, in fact, the case.

Interpretation of the Settlement Agreement is governed by the same principles applicable to other contractual agreements. ***Andes v. Albano***, 853 S.W.2d 936,940 (Mo.banc.1993). Thus, the Court must determine the scope of the Settlement Agreement by the intent of the parties, ascertained from the language used, and the circumstances surrounding the Settlement Agreement. ***Promotional Consultants v. Logston***, 25 S.W.3d 501,505 (Mo.App.E.D.2001). Language contained in a settlement agreement which is

unambiguous must be given its full effect, within the scope of the agreement. ***Slankard v. Thomas***, 992 S.W.2d 619,624 (Mo.App.S.D.1995).

On reading the Settlement Agreement at issue, it is apparent the Agreement represents a full and final settlement or compromise of employee's Claim for his work related pulmonary injury. ***Shockley v. Laclede Electric Cooperative***, 825 S.W.2d 44,48-49 (Mo.App.S.D.1992). Moreover, the Settlement Agreement satisfies the requirements for a compromise settlement, set forth in Industrial Commission regulations. 8 CSR 50-2.010(18)(A).

Those regulations state a compromise settlement agreement shall set forth the issues compromised, the total amount of medical costs incurred and previously paid, the total amount of medical costs paid under the agreement, the total amount of temporary benefits previously paid, the total amount of any permanency benefits previously paid, the total amount of permanency benefits paid under the agreement, the total amount of all benefits paid under the agreement, the total amount or the percentage of employee's attorney's fees and expenses, and the total compensation paid in the case. 8 CSR 50-2.010(18)(A). The Settlement Agreement herein contains all the information required by the regulation. Paragraph 6 of the Settlement Agreement states the disputed issues between the parties include accident/occupational disease/repetitive exposure to occupational chemical dust, medical causation, nature and extent of temporary total disability and permanent partial disability, responsibility for unauthorized medical care past or future. (Ex.4-5).

There is no language in Paragraph 6, the "Additional Comments" section of the Settlement Agreement or the Addendum to the Settlement Agreement, stating the parties reserved the right to adjudicate any issue, including future medical care, at a subsequent time. Nor is there any language in the Settlement Agreement or Addendum thereto, explicitly stating or implying that the Settlement Agreement is a partial settlement, or that the parties intended the Settlement Agreement to be partial in nature. (Ex.4-5).

While Paragraph 6 in the Settlement Agreement states employer/insurer agree to leave future related pulmonary medical care open, it goes on to describe, with particularity, the scope of employer's obligation to provide future medical treatment. That obligation is limited to providing "monitoring care" of occupational chemical dust induced COPD and bronchial reactivity with obstructive airway. The Settlement Agreement does not merely state that future medical care is left open, or that employer is obligated to provide future medical treatment, without limiting the scope and nature of that obligation. (Ex.4-5).

Giving the language of the Settlement Agreement its clear and unambiguous meaning, the Agreement between Michael Alcorn and ISP Minerals fully and finally compromised employee's Claim For Compensation arising out of the chemical exposure taking place on 10-14-05. ***Id.***;8 CSR 50-2.010(18)(A); ***Promotional Consultants***, 25 S.W.3d at 515;***Slankard***, 912 S.W.2d at 624. The Settlement Agreement contains no language, indicating it is the intent of the parties to resolve only certain disputed issues in regard to the Claim, such as would make it a partial settlement of the nature contemplated by Respondent in its Brief. ***Id.*** Absent in the Settlement Agreement is any reservation,

preserving the right of the parties to resolve a disputed issue arising under the Claim at a subsequent time. ***Id.*** Respondent's assertion that the Settlement Agreement constitutes a partial settlement is without support in the clear and unambiguous language of the Agreement, Industrial Commission regulations, and Missouri caselaw. ***Id.***

Respondent seeks to distinguish ***Shockley v. Laclede Electric Cooperative***, 825 S.W.2d at 48-49;***Mosier v. St. Joseph Lead***, 205 S.W.2d 228 (Mo.App.E.D.1947);***Derby v. Jackson County Circuit Court***, 141 S.W.3d 413 (Mo.App.W.D.2004); and ***Meinczinger v. Harrah's Casino***, 367 S.W.3d 666,669 (Mo.App.E.D.2012) relied on by Relator to support its argument that the Industrial Commission did not possess jurisdiction to review the approved Settlement Agreement and remand the Claim to the Division for an evidentiary hearing regarding medical care. It asserts those cases dealt with "different partial settlement issues," and did not involve a settlement document which expressly left future medical open to "later determination at an indefinite time." (Res.Br.,14-15). Respondent's suggestion that ***Shockley***, ***Mosier***, ***Derby***, and ***Meinczinger*** involved partial settlements misconstrues those decisions, and the settlement agreements at issue therein. ***Id.***

Ironically, Respondent relies on ***Derby v. Jackson County Circuit Court,*** in arguing the Settlement Agreement did not fall within the scope of Section 287.390. ***Derby*** rejected a similar argument. ***Derby***, 141 S.W.3d at 414-415.

In ***Derby***, the court affirmed an Industrial Commission order, holding it lacked jurisdiction to review an approved settlement agreement in regard to an employee's request for additional medical care. ***Id.*** While working, Derby sustained an ACL tear in

her left knee and injured ligaments in her left ankle. Derby entered into a settlement agreement with her employer. In exchange for its release from further liability for Derby's work injury, employer agreed to pay a lump sum to Derby. Since Derby was morbidly obese, eliminating surgery as a viable option at time of settlement, employer agreed in the settlement stipulation to provide Derby with braces indefinitely, or if she became a surgical candidate within two years of the date of settlement, to cover the reasonable and customary charges for surgery to repair Derby's ACL tear and torn ankle ligaments. ***Derby***, 141 S.W.3d at 414-415.

After an ALJ approved the settlement, Derby filed a motion, seeking an enlargement of time to obtain medical treatment. The Industrial Commission found the settlement agreement finally and completely settled Derby's claim, and was not an award of benefits subject to Commission review. ***Derby***, 141 S.W.3d at 415.

On appeal, Derby argued the settlement agreement was subject to Industrial Commission review, because it did not resolve the entire dispute between the parties, such that her claim was left open for final determination by the ALJ after the settlement was approved. Derby asserted the settlement agreement did not resolve the issue of future treatment for her left knee and ankle, since it provided employer was to pay for surgery, if Derby became a surgical candidate within two years of the settlement's execution and approval. She posited because the settlement agreement was left open, it was not a settlement encompassed by Section 287.390, and thus, the ALJ possessed jurisdiction to finally determine her claim. ***Id.***

The Western District rejected this argument. ***Id.*** Affording the language of the settlement agreement its plain and ordinary meaning, the court found it was clear the parties intended to fully and completely resolve the claim, and as part of the settlement, Derby was entitled to have knee surgery done at employer's expense if she became a surgical candidate within two years of executing the settlement. The word "if", contained in the settlement agreement, indicated surgery was conditional on Derby becoming a surgical candidate within two years. Nothing in the settlement agreement suggested the parties intended the ALJ to review the issue of medical care at the end of the two year period, and then finally resolve Derby's claim. ***Id.*** Thus, the parties entered into a settlement agreement which resolved Derby's entire claim for compensation benefits. Since the Industrial Commission lacked jurisdiction to review approved settlement agreement reached in accordance with Section 287.390, it did not err in dismissing Derby's application for review. ***Id.***

The same result obtains in the instant case. Nothing in the Settlement Agreement, including Paragraph 6 therein regarding employer's obligation to provide future related medical monitoring care, explicitly states or implies that the parties intended the Settlement to be partial, or that the issue of future medical treatment was to be reviewed by the ALJ or Industrial Commission at a subsequent date, following approval of the Settlement Agreement. (Ex.4-5). The Settlement Agreement entered into between Michael Alcorn and ISP Minerals demonstrates the intent of the parties to fully, finally, and completely resolve employee's Claim For Compensation. ***Id.*** As was the case in ***Derby***, the language in Paragraph 6 of the Settlement Agreement regarding future

medical care did not serve to make the Agreement a "partial" settlement or to remove the Settlement Agreement from the purview of Section 287.390. ***Id.***

Respondent contends Missouri courts have treated settlements which leave future medical care open as temporary awards. It cites ***Blissenbach v. GM Assembly Division***, 776 S.W.2d 889 (Mo.App.E.D.1989), to support this proposition. However, ***Blissenbach*** is distinguishable, and Respondent's reliance on that decision is misplaced.

Contrary to Respondent's contention, ***Blissenbach*** did not involve a settlement, but rather, a final award. Blissenbach sustained a work injury. His claim against GM was tried before an ALJ. At hearing, the parties stipulated and agreed that, in addition to any award issued in favor of Blissenbach "the claimant shall be afforded continuing medical treatment by the employer." The ALJ awarded 40% permanent partial disability of the body as a whole, and ordered compensation to be paid, in the amount of $65.00 a week, for 160 weeks. ***Blissenbach***, 776 S.W.2d at 890.

Subsequently, Blissenbach filed a motion to review the award on the grounds of a change in condition. Blissenbach claimed further surgery had been required, but GM had passed the bills along to the group insurer for payment. He asked for an order, requiring GM to pay the bills and for a finding of permanent total disability. ***Id.*** The Industrial Commission denied the motion, based on lack of jurisdiction, because the adjudicative period of permanent partial disability had expired, and the award was fully paid. The circuit court affirmed. ***Id.***

Blissenbach appealed. Since the award was for a period of 160 weeks, and since the disability period had expired, the Industrial Commission did not possess jurisdiction

to either review the award or entertain Blissenbach's motion for change in condition. This would be true if the award was a final award. However, the record before the court did not show the award in issue was a final award. Since the parties stipulated employer would pay continuing treatment, the jurisdiction of the Industrial Commission was therefore held open, until the award was made final. The court remanded the case for an Industrial Commission determination as to whether a final award had been made. ***Blissenbach***, 776 S.W.2d at 891.

Nor did ***Noel v. ABB Combustion Engineering***, 383 S.W.3d 480 (Mo.App.E.D.2012), involve a settlement within the purview of Section 287.390. (Res.Br.,15). In ***Noel***, an injured worker challenged an Industrial Commission decision, which denied her request for a determination that changing her medication regimen would endanger her life, health, or recovery. Noel sustained a work related back injury in 1997, for which she was awarded future medical treatment to be paid for by ABB. Following the award, Noel treated with a pain management physician, Dr. Granberg, and with Dr. Robinson, a psychiatrist, for depression. In 1999 and 2000, Noel sustained additional work injuries. ***Noel***, 383 S.W.2d at 482.

While her compensation claim was pending for all three injuries, ABB attempted to change Noel's doctors. This issue was taken up as part of Noel's claim. The Industrial Commissions's final award incorporated ALJ Knowlan's 2006 award. ALJ Knowlan found Noel was permanently and totally disabled from the 1997 back injury and resulting depression. He ordered ABB to provide future medical care for these conditions. ABB

continued providing treatment to Noel through Drs. Robinson and Granberg. By 2011, Noel was taking 13 medications. ***Id.***

In April 2011, ABB required Noel to undergo an IME by Dr. Jarvis. Dr. Jarvis recommended changes to Noel's medications. Subsequently, ABB notified Noel it would no longer pay for several of the disputed medications she was taking. ***Noel***, 383 S.W.3d at 482.

Noel filed a motion with the Industrial Commission to reopen her claim. She requested the Commission prevent a change in her medications, because it would endanger her life, health, or recovery. The Industrial Commission ordered an evidentiary hearing. After reviewing the hearing transcript, exhibits and parties' briefs, the Industrial Commission concluded Noel failed to meet her burden of showing all the medications she was taking were necessary to cure and relieve her work injuries. It did not reach the issue of whether a change in treatment would endanger Noel's life, health, or recovery. Noel appealed. ***Noel***, 383 S.W.3d at 482-483.

Reading together Sections 287.140.1 and 287.140.2, the court found an employee's treatment must be reasonably required under Section 287.140.1 before the Industrial Commission can make a determination under Section 287.140.2 as to how that treatment was being provided. Under Section 287.140.1, employee need only prove her need for treatment and medications flowed from the work injury. ***Noel***, 383 S.W.3d at 484. The Industrial Commission erred in failing to reach the issue of whether employer's change to Noel's medications would endanger her life, health, or recovery. ***Id.***

ABB did not dispute Noel's treatment with Dr. Granberg was for pain associated with her work related back injury, and ALJ Knowlan's 2006 award ordered it to provide future medical care for Noel's back pain. All the physicians agreed Noel needed pain medication to treat chronic pain from her back injury. However, they disagreed as to which pain medication was the most appropriate or effective. Undisputed evidence showed pain medication was reasonable and necessary to cure and relieve Noel from the effects of her work related back injury, and it was ABB's obligation to provide such care. Thus, the Industrial Commission erred in failing to determine whether reasonable grounds existed to believe the manner in which ABB chose to provide pain medication and treatment endangered Noel's life, health, or recovery. ***Noel***, 383 S.W.3d at 484-485.

There were few clear statements in the record regarding whether Noel's need for psychiatric medications flowed from her compensable injury. ALJ Knowlan's 2006 award held ABB responsible to provide future medical care under Section 287.140.1 for depression caused by Noel's back injury. ***Id.***

Dr. Robinson stated the cause of Noel's depression was multifactorial, but it was all part of an ongoing condition triggered by her back injury. ***Id.*** Dr. Jarvis offered a contrary opinion. In Dr. Jarvis' opinion, Noel's mood was related to a pre-existing personality disorder, rather than a major depressive episode caused by her work injury. Dr. Robinson's records for the past several years focused on recent social and family stressors, including Noel's two failed marriages, problems she had with her sons, and the death of one son. It was these things, rather than Noel's work injury, which were the primary cause of her current depressed mood. However, Dr. Jarvis also found some of

Noel's current depression was caused by physical pain from her back injury and the stress of litigation. ***Noel***, 383 S.W.3d at 485-486. In any event, Dr. Jarvis found none of the disputed medications were connected with Noel's compensable injury, because her personality disorder, along with most of the bases for her current depressed mood, were unrelated to her back injury. ***Noel***, 383 S.W.3d at 486.

Thus, there was conflicting evidence regarding the disputed psychiatric medications. ***Noel***, 383 S.W.3d at 487. Both the opinions of Dr. Jarvis and those of Dr. Robinson constituted competent and substantial evidence on which the Industrial Commission could rely. In concluding Noel failed to meet her burden regarding these medications, the Industrial Commission chose to believe Dr. Jarvis over Dr. Robinson. The court could not disrupt this choice on appeal. Thus, the Industrial Commission's finding Noel failed to meet her burden regarding the disputed medications was supported by competent and substantial evidence. ***Id.***

Respondent's reliance on ***Noel*** is misplaced. Unlike the instant Claim, Noel involved a litigated final award, not an approved settlement agreement. At issue in ***Noel*** was whether treatment being rendered to an injured employee under a final award endangered her life, health or recovery, within the meaning of Section 287.140.2. At no time has Michael Alcorn argued the treatment employer provided to him pursuant to the Settlement Agreement in any way endangered his life, health, or recovery from the work injury, so as to implicate Section 287.140.2. ***Noel*** is inopposite, and does not support Respondent's argument it possessed jurisdiction to review the approved Settlement Agreement.

Citing ***Weiss v. Anheuser-Busch***, 117 S.W.2d 682,685-686 (Mo.App.1938), Respondent asserts Missouri courts have treated settlements which leave future medical care open as temporary awards. (Res. Br.,15). ***Weiss*** involved a temporary or partial award, rather than a settlement agreement, as does the instant case.

At issue in ***Weiss*** was whether the Industrial Commission erred in granting future medical care in a temporary or partial award. The court found no error, since the Act expressly provided a temporary or partial award of compensation could be made, and modified from time to time to meet the needs of the case, and the claim could be kept open until a final award was made. ***Weiss*** has no relevance to the jurisdictional issue. In 1938 when ***Weiss*** was handed down, and at present, the Act expressly authorizes ALJs and the Industrial Commission to issue temporary or partial awards, and confers jurisdiction on the Division and Commission to modify such awards. ***Weiss***, 117 S.W.2d at 685;**RSMo** §287.510(2005);**Mo.Stat.Ann.** §3344(1929).

Relying on ***Weiss***, ***Blissenbach*** and ***Noel***, Respondent argues the language in Paragraph 6 of the Settlement Agreement, leaving open future medical care for employee's pulmonary condition and authorizing a treating physician, serves to make the Settlement Agreement partial or temporary, since treatment is ongoing during employee's lifetime. Thus, the Industrial Commission contends, the Settlement Agreement is not final, and it possesses jurisdiction to hold a hearing on the issue of medical treatment. (Res.Br.,22).

Employer's promise to provide employee with future related pulmonary care does not serve to remove the Settlement Agreement from the purview of Section 287.390.

Derby, 141 S.W.3d at 415. Nor is there any language in the Settlement Agreement, stating it was the intent to the parties thereto that the Settlement be partial in nature. Absent in the approved Settlement Agreement is any language, indicating the parties thereto were reserving their right to have any future dispute as to the medical care to be provided to employee thereunder to be resolved or adjudicated by the ALJ or Industrial Commission. ***Andes***, 853 S.W.2d at 940;***Promotional Consultants***, 25 S.W.3d at 506.

Respondent's arguments overlook the clear and unambiguous language of the Settlement Agreement, wherein employee stated he understood that by entering into the Agreement, he was forever closing out his Claim under the Act; he would receive no further compensation benefits or medical aid by reason of the accident/occupational disease (except for the medical monitoring care explicitly provided for in Paragraph 6 of the Settlement Agreement); and employer was released from all liability for the accident/occupational disease, on approval by the ALJ. (Ex.4-5). Given the presence of this language, and the absence of any language in the Settlement Agreement, indicating the parties did not intend the Agreement to fall within the scope of Section 287.390, or reserving the right to have issues regarding future medical care resolved by the Division or Industrial Commission at a later date, employer's promise in Paragraph 6 of the Agreement to leave future related pulmonary medical care open, did not serve to transform the Settlement Agreement into a partial settlement or a temporary award under Section 287.510.

Respondent's legal analysis presumes that if a workers' compensation settlement agreement leaves future medical care open, such an agreement constitutes a

partial settlement or a temporary award, over which the Industrial Commission retains jurisdiction to modify the agreement or resolve disputes arising between the parties regarding employer's obligation to provide future medical care. This presumption, however, is entirely without support in the language of the Act, in particular, Sections 287.140, 287.390, and 287.510. None of these Sections expressly or impliedly provides that where the parties to a compensation claim enter into a settlement agreement to compromise that claim, and the settlement agreement leaves future medical care open or employer obligates itself to provide employee with future medical care under the agreement, such a settlement is not a full and final compromise of a compensation claim, but rather, is a partial settlement or temporary award over which the Industrial Commission possesses continuing jurisdiction. **RSMo** §§287.140.1,287.390,287.510.

The Court must reject Respondent's argument that the Settlement Agreement, whereunder employer agreed to leave future related pulmonary medical care open, represents a partial settlement or temporary award, since treatment is ongoing during the life of the employee. This assertion is without support in the Workers' Compensation Act, or in ***Blissenbach***, ***Noel*** and ***Weiss***, on which Respondent relies. (Res.Br.,21-23).

Paraphrasing its 8-14-14 Order, Respondent asserts courts routinely hold determinations regarding medical care under Section 287.140 are for administrative determination by the Division or Industrial Commission. It cites ***State ex rel Rival v. Gant***, 945 S.W.2d 475,477 (Mo.App.W.D.1997);***State ex rel Standard Register Company v. Mummert***, 880 S.W.2d 925,926 (Mo.App.E.D.1994); and ***State ex rel Lester***

E. Cox Medical Center v. Wieland, 985 S.W.2d 924,926 (Mo.App.S.D.1999), to support this proposition. (Res.Br.,15).

As Relator discusses at length in its Brief,[1] these decisions do not support Respondent's argument that it possessed jurisdiction to review the approved Settlement Agreement and rule on the scope of employer's obligation thereunder to provide future medical care. For example, at issue in ***Rival*** was whether Rival engaged in prohibited discrimination against two injured employees because they retained counsel and filed compensation claims. ***Rival***, 943 S.W.2d at 476. ***Rival*** did not involve an approved settlement agreement, and the jurisdiction, or lack thereof, of the Industrial Commission to review that approved settlement agreement, and resolve disputes arising thereunder as to medical care. ***Rival***, 945 S.W.2d at 478. Similarly, ***Standard Register*** addressed whether a civil action had to be dismissed because the allegations made therein fell within the exclusive province of the Act. ***Standard Register***, 880 S.W.2d at 926. Neither ***Rival*** nor ***Standard Register*** involved the issue of the Industrial Commission's jurisdiction to review an approved settlement agreement where future medical care is left open.

Wieland, is likewise, inopposite. At issue in ***Wieland*** was whether an employer could use a prohibition action to obtain review over a temporary award issued under Section 287.510, requiring it to provide an injured employee with medical care. ***Wieland***, 985 S.W.2d at 924-925. At issue herein is not the propriety of a temporary or

[1] See Relator's Brief,56-63.

partial award issued pursuant to Section 287.510, as was the case in ***Wieland***. ***Wieland***, 985 S.W.2d at 925-926.

Significantly, ***Rival***, ***Standard Register***, and ***Wieland*** all addressed the authority of the Division or Industrial Commission to grant medical treatment to an injured employee, and determine the scope of the treatment to be afforded, *prior* to the final resolution of a claim. None of those decisions involved the jurisdiction of the Industrial Commission to resolve issues regarding an employer's obligation to provide an employee with medical care under an approved settlement agreement.

Respondent asserts if a final award contains future medical care, or if an award contains a provision leaving future medical care open, the Industrial Commission has authority to determine the necessity and reasonableness of the requested medical care, and whether such care is causally related to and flows from the work injury. (Res.Br.,16). Respondent goes on to state:

> "This same authority (i.e., the authority to determine the necessity and reasonableness of requested medical care and to determine whether such medical care is causally-related to, and flows from, the work injury) applies to settlements approved, in part, based upon and [sic] Employer's promise to provide future medical care." (Res.Br.,16).

The Industrial Commission cites no statutory or case authority to support this assertion. Neither Section 287.390, nor any other provision of the Workers' Compensation Act, expressly authorizes the Industrial Commission to review an approved settlement

agreement, and determine disputes between the parties to that agreement regarding medical care. **RSMo** §287.390.

The Industrial Commission states none of the 2005 amendments to the Act "prohibited the Commission's jurisdiction post settlement or in a final award regarding the issue of determining future medical care." (Res.Br.,16). Respondent's analysis presupposes that the Industrial Commission possesses jurisdiction or authority to act, unless a provision of the Workers' Compensation Act prohibits it from acting in a certain manner, or from exercising authority in a particular situation. This analysis fails to acknowledge the statutory nature of the Workers' Compensation Act and proceedings thereunder, as recognized in longstanding Missouri caselaw. ***Id.***

The Workers' Compensation Act is entirely a creature of statute. ***Hayes v. Show Me Believers***, 192 S.W.3d 706,707 (Mo.banc.2006). Like all administrative bodies, the Industrial Commission possesses only such jurisdiction as is conferred on it by statute. ***Sopido v. University Copiers***, 23 S.W.3d 807,810 (Mo.App.E.D.2000). The Industrial Commission can only do those things, and make those orders, which the Act or regulations promulgated under the Act, authorize. ***Ringiesen v. Insulation Services***, 539 S.W.2d 621,625-626 (Mo.App.E.D.1976). The Industrial Commission must find authority to make orders or awards in the Act. ***State ex rel Lakeman v. Siedlik***, 872 S.W.2d 503,505 (Mo.App.W.D.1994). It possesses no authority, other than that which is granted to it by statute. ***Carr v. North KC Beverage***, 39 S.W.3d 205,207 (Mo.App.W.D.2001).

As these authorities demonstrate, for the Industrial Commission to act, there must be an affirmative grant of jurisdiction or authority in the Workers' Compensation Act. ***Id.***;***Lakeman***, 872 S.W.2d at 505;***Ringiesen***, 539 S.W.2d at 625-626. However, no provision of the Act expressly confers jurisdiction or authority on Respondent to review an approved settlement agreement, determine the rights and obligation of the parties to that agreement, remand the claim to the Division for an evidentiary hearing, or enforce an approved settlement agreement. Absent an express grant of authority in this regard, Respondent did not possess jurisdiction to act as it did in its 8-14-14 Order. ***Id.*** This is particularly true, given the mandate of strict construction codified in Section 287.800.1. In the absence of statutory language expressly investing the Industrial Commission with jurisdiction to review an approved settlement agreement or act on a claim which has been compromised by an approved settlement agreement, Respondent did not possess jurisdiction to review the Settlement Agreement between Michael Alcorn and ISP Minerals, or remand the Claim to the Division for an evidentiary hearing regarding medical care. ***Carr***, 49 S.W.3d at 207;***Lakeman***,872 S.W.2d at 505.

Respondent argues the 2005 amendments to the Act, in particular, Section 287.801, do not authorize circuit courts to exercise any jurisdiction, except as provided in Section 287.500. The Industrial Commission asserts it is well established Section 287.500 does authorize circuit courts to "review" workers' compensation settlements or awards. (Res.Br.,16-17).

An action under Section 287.500 is limited in scope. A Section 287.500 action is not part of the proceedings to establish an employee or employer's substantive rights or

obligations. Rather, a Section 287.500 action merely affords a method for enforcing an award or settlement. ***Taylor v. St. John's Regional Health Center***, 161 S.W.3d 868,871 (Mo.App.S.D.2005). The legislature enacted Section 287.500, since the Industrial Commission does not possess authority to review or enforce an approved settlement agreement. ***Carr***, 49 S.W.3d at 207;***Vaughn v. County of Mississippi***, 568 S.W.2d 817,818 (Mo.App.S.D.1978). The only judgment a circuit court can enter, sitting in a Section 287.500 action, is one in accordance with the award of settlement agreement sought to be enforced. ***Schneidler v. Feeders Grain and Supply***, 24 S.W.3d 739,741 (MoApp.E.D.2000).

However, the express limitations on the jurisdiction of a circuit court sitting in a Section 287.500 action do not extend to a declaratory judgment or specific performance action filed in circuit court, seeking review of an approved workers' compensation settlement agreement and a determination of the rights and obligations of the parties thereto. Respondent's arguments ignore the availability of these remedies for review of the approved Settlement Agreement and a determination of employer's obligation thereunder to provide future medical care, and whether that obligation encompasses the provision of inhaler medications. **RSMo** §527.020; ***Precision Instruments v. Cornerstone Propane***, 220 S.W.3d 301,303 (Mo.2007).

Even though Michael Alcorn could not have the dispute arising under the approved Settlement Agreement adjudicated in his Section 287.500 action filed in Iron County Circuit Court, there exist alternative avenues of relief whereby that dispute can be resolved. While a circuit court sitting in a Section 287.500 action cannot adjudicate a

medical dispute between the parties to an approved settlement agreement wherein future medical care is left open, the circuit court can resolve that dispute in a specific performance action, or a declaratory judgment action brought pursuant to Section 527.020. ***Id.*** Given the availability of such remedies, neither Section 287.801, nor the limited jurisdiction of a circuit court in a 287.500 action, necessitates Industrial Commission review of approved workers' compensation settlements to resolve disputes thereunder regarding medical care.

Respondent posits amendments made to Section 287.390 in 2005 conferred jurisdiction on it to enforce settlement agreements. (Res.Br.,17-19). However, Respondent's construction of the 2005 amendatory language takes that language out of context, and fails to afford the statutory language its plain and unambiguous meaning.

In 2005, the legislature added the following language to Section 287.390.1:

> "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." **RSMo** §287.390.1.

Relying on this addition to Section 287.390.1, Respondent avers Section 287.390 "does not provide that the Commission loses jurisdiction post settlement. It provides that the Division or Commission may approve and **enforce** Agreements." (Res.Br.,19).

Respondent's interpretation of the 2005 statutory language takes it entirely out of context. Reading Section 287.390.1 in its entirety and giving the language therein its plain and ordinary meaning, it becomes apparent that Subsection deals with *approval* of compromise settlements in workers' compensation cases, and the circumstances under which the Division or Industrial Commission **must** approve such settlements. ***Hayes***, 192 S.W.3d at 707. The language added to Section 287.390.1 in 2005 sets forth the situations in which approval of a settlement agreement is mandatory. This new statutory language does not, either explicitly or by implication, authorize either the Division or Industrial Commission to enforce an approved settlement agreement. ***Id.*** To construe the new language in Section 287.390.1 as conferring jurisdiction on the Industrial Commission to enforce approved settlement agreements, as Respondent does, is to violate Section 287.800.1, which requires a statute be given no broader application than is warranted by its plain and unambiguous terms. **RSMo** §287.800.1;***Robinson v. Hooker***, 323 S.W.3d 418,423 (Mo.App.W.D.2010).

If it was the intent of the legislature, when adding language to Section 287.390.1 in 2005, to confer on the Industrial Commission the authority to review an approved workers' compensation settlement and enforce the same, the legislature would have explicitly so provided in its amendments to that Subsection. However, it failed to do so. ***Id.***;***Frazier v. Treasurer***, 869 S.W.2d 152,157 (Mo.App.E.D.1993).

That the new language in Section 287.390.1 speaks to approval of workers' compensation settlements, not enforcement or review of the same, is demonstrated by the clear and unambiguous language of the amendment, as well as the fact that the

legislature did not repeal Section 287.500, conferring authority on circuit courts to enforce approved settlement agreements, or add language to Section 287.500, so as to make that statute consistent with the new language in Section 287.390.1, which Respondent interprets as allowing it to enforce approved settlement agreements. If the Industrial Commission could review and enforce approved workers' compensation settlements, there would be no need for Section 287.500, and the remedy provided thereunder. **RSMo** §287.500;***Vaughn***, 568 S.W.2d at 818;***Carr***, 49 S.W.3d at 207. Respondent's contention the legislature conferred jurisdiction on it to review an approved settlement agreement by adding the word **"enforceable"** to Section 287.390.1, is devoid of merit. (Res.Br.,21). Despite what Respondent would have the Court believe, the language added to Section 287.390.1 in 2005 did not enhance the "already recognized authority and jurisdiction of the Commission to effectively carry out the terms of the agreement." (Res.Br.,24).

Respondent contends if circuit courts were to resolve factual issues regarding medical care in approved workers' compensation settlements, this would create inconsistent outcomes, and "confusion and peril" to the working citizens of Missouri. (Res.Br.,23). This assertion ignores two facts.

First, any determination by a circuit court regarding future medical under an approved settlement agreement leaving future medical care open, will be governed by the Workers' Compensation Act, and the body of caselaw construing that statute. Second, Missouri Circuit Courts routinely determine the rights and obligations of parties to settlement agreements in different types of cases, be they contract, tort, products liability

etc., in actions for declaratory judgment or specific performance brought by parties to those agreements. The Circuit Courts are no less able, applying the provisions of the Workers' Compensation Act and caselaw construing the Act, to determine the rights and obligations of the parties to a workers' compensation settlement, than they are to determine the rights and obligations of the parties to any other kind of settlement agreement.

Respondent argues Section 287.801, providing only ALJs, the Industrial Commission, and appellate courts have the power to review claims filed under the Act, clearly and unambiguously prohibits circuit court review of a settlement agreement which arises out of Section 287.390. However, the express terms of Section 287.801 do not bar circuit court review of an approved workers' compensation settlement. **RSMo** §287.801. Nor does Section 287.801 prohibit a circuit court, sitting in a specific performance action or a declaratory judgment action under Section 527.020, from construing an approved workers' compensation settlement and determining the rights and obligations of the parties thereto. ***Id.***;**RSMo** §527.020;***Precision Instruments***, 220 S.W.3d at 303. Section 287.801 in no way diminishes the jurisdiction of Missouri circuit courts to litigate issues arising under approved workers' compensation settlements, within the confines of a specific performance or declaratory judgment action.

Respondent's attempt to use Section 287.801 to restrict the subject matter jurisdiction of Missouri circuit courts runs afoul of Article V, Section 14 of the Missouri Constitution, providing circuit courts have original jurisdiction over all cases and matters, civil and criminal, and this Court's ruling in ***McCracken v. Walmart Stores East, LP***,

298 S.W.3d 473,476-477 (Mo.banc.2009), recognizing that circuit courts possess subject matter jurisdiction over civil cases involving work related injuries, and the applicability of the Act goes to the circuit court's statutory authority to grant relief in a particular case. ***McCracken***, 298 S.W.3d at 476-478. Since Respondent's arguments fail to recognize the subject matter jurisdiction of Missouri circuit courts, as granted by the state Constitution, and as recognized by the instant Court in ***McCracken***, those arguments must be rejected. ***Id.***

Respondent contends Relator's argument, that an employer's obligation to provide future medical care in an approved settlement agreement where future medical care is left open, can be adjudicated in an action for declaratory judgment or specific performance, "is not applicable in issues of future medical care in a partial settlement." (Res.Br.,27). As with many of the assertions in its Brief, Respondent fails to provide any authority, whether statutory or caselaw, to support this proposition. The Settlement Agreement entered into between Michael Alcorn and ISP Minerals was a full and final compromise of employee's Claim. ***Derby***, 141 S.W.3d at 415-416;***Mosier***, 205 S.W.2d at 231-232;***Shockley***, 825 S.W.2d at 48-49. That Paragraph 6 of the Settlement Agreement obligated employer to provide future related medical care, in the form medical monitoring care for employee's pulmonary condition, did not serve to transform the Settlement Agreement into either a partial settlement or a temporary or partial award of the nature contemplated by Section 287.510. ***Id.***;**RSMo** §§287.390,287.510.

Finally, Respondent argues Relator will not suffer immediate and irreparable harm if the Court quashes its Preliminary Writ Of Prohibition, since ISP Minerals has chosen

not to pay for employee's medications and is "therefore not under a financial harm." (Res.Br.,27). This argument misconstrues Relator's position.

Relator does not contend it will suffer irreparable harm if the Court fails to make its Preliminary Writ Of Prohibition absolute, since it will be forced to pay for the inhaler medications sought by Michael Alcorn. Rather, Relator asserts it will face immediate and irreparable injury, since it will be compelled to have employee examined by a physician, to appear at and participate in the deposition of employee's medical expert, to depose Michael Alcorn and obtain records regarding treatment he has undergone since ALJ Lane approved the Settlement Agreement, to prepare for and participate in an evidentiary hearing before the Division regarding its obligation to provide employee with treatment under the approved Settlement Agreement, and to draft and present a brief to Respondent regarding the nature and extent of that obligation, so as to comply with the 8-14-14 Order. This, despite the fact that Respondent does not possess jurisdiction over the approved Settlement Agreement, or employee's Claim. ISP Mineral contends that, absent an absolute Writ Of Prohibition, it will be subjected to irreparable harm in that it will have to engage in unnecessary, inconvenient, and expensive litigation before the Division and Industrial Commission. ***State ex rel Anheuser-Busch v. Mummert***, 887 S.W.2d 736,737 (Mo.App.E.D.1994);***State ex rel Premier Marketing v. Kramer***, 2 S.W.3d 118,121 (Mo.App.W.D.1999). Given these circumstances, the Court should make its Preliminary Writ of Prohibition Absolute. ***Id.***

CONCLUSION

Respondent acted without and in excess of its jurisdiction under the Workers' Compensation Act in finding it possessed jurisdiction to review the approved Settlement Agreement, determine the rights and obligations of the parties to that Agreement with regard to future medical care, and remand the Claim to the Division for an evidentiary hearing regarding medical treatment. Accordingly, the instant Court should make its Preliminary Writ Of Prohibition absolute.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing document was filed with the Missouri electronic filing system this 11th day of March, 2015, which will send a copy to: Ms. Nancy Mogab, at 701 Market Street, Suite 1510, St. Louis, Missouri 63101, (314-241-4477), attorney for Respondent; and to Mr. John Larsen, Jr., James Abry, Jr. and Curtis Chick, Jr., Labor and Industrial Relations Commission, 3315 West Truman Boulevard, Jefferson City, Missouri 65102.

/s/ Mary Anne Lindsey

CERTIFICATE OF COMPLIANCE

This Brief complies with Rule 84.06(b)(1) and contains 6,407 words. To the best of my knowledge and belief, the copy of the Relator's Reply Brief forwarded to the Clerk of the Court, via electronic mail, in lieu of a floppy disc or CD, has been scanned for viruses, and is virus-free.

/s/ Mary Anne Lindsey