

SUPREME COURT  
STATE OF LOUISIANA

COPY

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DOCKET NO. 2004 C - 2254

GREGORY M. TAYLOR,

PLAINTIFF/APPELLANT

VERSUS

TOMMIE'S GAMING, ET AL

DEFENDANT/RESPONDENT

SUPREME COURT  
LOUISIANA  
2005 FEB 24 PM 12:24

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OF COURT

FROM THE COURT OF APPEAL,  
SECOND CIRCUIT  
DOCKET NUMBER: 38,586 - WCA  
AND  
OFFICE OF WORKERS COMPENSATION,  
DISTRICT 1W, NO. 02-00501,  
HONORABLE ELIZABETH WARREN PRESIDING

ORIGINAL BRIEF OF DEFENDANT/RESPONDENT,  
U.S. SPECIALTY INSURANCE COMPANY

Respectfully Submitted,  
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## STATEMENT OF THE CASE

On or about November 9, 2000, Greg Taylor ("Taylor") was involved in a motor vehicle accident in the course and scope of his employment with Tommie's Novelty and Gaming ("Tommies"). As a result of such accident, claimant allegedly sustained injuries to his neck for which he claimed benefits from U.S. Specialty Insurance Company ("U.S. Specialty"), Tommie's workers' compensation insurer at the time.

Subsequently, Taylor returned to work at Tommie's and later claimed that on September 14, 2001, he aggravated and/or suffered addition injury when he was moving a pool table and pinball machine while in the course and scope of his employment with Tommie's. At the time of Taylor's alleged second injury and/or re-injury, Bridgefield Insurance Company, ("Bridgefield"), provided workers' compensation coverage for Tommie's. Following such event, despite demand by Taylor, both U.S. Specialty and Bridgefield refused to workers' compensation benefits to him.

As a result, Taylor filed a disputed claim for compensation with the OWC, seeking benefits from Bridgefield based on the aggravation of his prior work-related injury. Taylor later amended his claim to add U.S. Specialty as a defendant after it refused to pay any additional workers' compensation benefits from either accident. Bridgefield also filed a Cross Claim against U.S. Specialty contending, among other things, that "The alleged injuries and/or disability sued for herein disputed claim of Taylor are the result of and caused by an accident which occurred on November 9, 2000." See Record pg. 41. As part of discovery in this matter, Taylor, in addition to written testimony, gave sworn testimony in the form of deposition on September 17, 2002. See Bridgefield Exhibit B-7. Both workers' compensation carriers eventually filed reconventional demands against Taylor for damages, restitution and the forfeiture of his benefits, alleging that he had made fraudulent statements and misrepresentations in violation of La RS 23:1208.

It is also noted that Taylor U.S. Specialty and Bridgefield have all filed Petitions for damages, against the adverse parties in the November 2000 accident. Such litigation is still pending in the District Court. As part of discovery in this matter, Taylor, in addition to written testimony, gave sworn testimony in the form of a deposition on June 24, 2002. See Bridgefield Exhibit B-6.

With regards to this claim, a trial was held in front of the workers' compensation judge on April 15, 2003. At trial, the workers' compensation judge rendered oral judgment finding that

Taylor had violated Louisiana Revised Statute 23:1208 when he made numerous willful misrepresentations for the purpose of obtaining benefits. In particular, this Court determined that Taylor had made numerous misrepresentations with regards to at least three separate issues, namely: 1) Taylor's testimony regarding the January 26, 2002 MVA; 2) Taylor's testimony regarding his Employment status after February 2002; 3) Taylor's testimony regarding prior injuries to his neck, i.e. prior to November of 2000, at trial and to his health care providers since the inception of his claim and since his alleged injury.

Additionally, this Honorable Court held a separate hearing and ordered that Greg Taylor make restitution to his Employer, Tommie's Novelty and Gaming, and its insurance carrier, U.S. Specialty, pursuant to Section 1208(D).

## LAW AND ARGUMENT

As observed by the Louisiana Supreme Court in *Rhodes v. Lewis*, 01-1989 (La.5/14/02), 817 So.2d 64: The purpose of the Workers' Compensation Act is to set up a court-administrated system to aid injured workmen by relatively "informal" and "flexible" proceedings. *Falgout v. Dealers Truck Equipment Co.*, 98-3150 (La.10/19/99), 748 So.2d 399; *Landreneau v. Liberty Mut. Ins. Co.*, 309 So.2d 283 (La.1975). The Louisiana Constitution and the Workers' Compensation Act were amended, and district courts were divested of jurisdiction over claims arising out of the Workers' Compensation Act. *Id.* As a result, the OWC was empowered to resolve disputes and issue orders regarding workers' compensation claims. *Id.*

Specifically, workers' compensation judges were appointed to decide the merits of these controversies as equitably, summarily, and simply as may be. LSA-R.S. 23:1317. Although these judges are not bound by the technical rules of evidence and/or procedure for that matter, they are most certainly bound by the jurisprudence of this Honorable Court. LSA-R.S. 23:1317; *Rhodes v. Lewis*, 01-1989 (La.5/14/02), 817 So.2d 64. With that being said, this Court in *Resweber* provided a clear test for the application of La.R.S. 23:1208. *Resweber v. Haroil Constr. Co.*, 94-2708, p. 7 (La.9/5/95); 660 So.2d 7, 12. Once these requirements are met, the statutory forfeiture provisions apply and **must be enforced**. *Resweber v. Haroil Const. Co.*, 660 So.2d 7, 14, 94-2708 (La. 9/5/95.); *Meyer v. Carr Stone & Tile Co.*, 01-1422 (La. App. 4 Cir. 3/13/02), 813 So.2d 529, 531; *Distefano v. B & P Const., Inc.*, 874 So.2d 407, (La. App. 5 Cir., 2004). The only requirements for forfeiture of benefits under Section 1208 are that: (1) there is a false statement or misrepresentation, (2) it is willfully made, and (3) it is made for the purpose of obtaining or defeating any benefit or payment. *Id.* Clearly, these requirements were met with Gregory Taylor's testimony alone as set forth in the record and the Second Circuit's opinion. Upon the conclusion of Gregory Taylor's testimony at trial, no evidence whatsoever could have any bearing on the 1208 determination. Once 1208 is found applicable, essentially all other issues are moot. See *KLLM, Inc. v. Reed*, 771 So.2d 728, 2000-295 (La.App. 3 Cir. 10/11/00); See also Justice Carter's dissenting opinion in *Leonard v. James Industrial Constructors*, 879 So. 2d 724, 2003-0040 (La. App. 1 Cir. 5/14/04).

As the Second Circuit's opinion in this matter points out, the dismissal was actually the granting of the Reconventional Demands of U.S. Specialty and Bridgefield.

Moreover, the record also fails to support the applicant's contention that the involuntary

dismissal was improper for several additional reasons. First and foremost, the Applicant failed to follow the hearing officer rules and the Scheduling Conference Order issued by the workers' compensation judge by not filing a Pre-trial Statement or the likes thereof. See Record pg. 54. To ask this Court to cure such defect at this time is inappropriate and without merit.

Additionally, prior to the onset of the trial, Applicant through counsel communicated to all parties, including the workers' compensation judge, that the only witnesses he intended to call in his defense were Gregory Taylor, and possibly, his spouse, Tina Taylor. See Record pg 557, lns. 5-14. Appellant at no time made any indication in any pre-trial pleading and/or statements that any other testimony or exhibits would have been presented.

With regards to the restitution, while we agree with the Applicant in that this is an important issue that could use clarification by this Honorable Court, our reasoning is quite different. LSA - R.S. 23:1208 states in pertinent part:

C. (1) Whoever violates any provision of this Section, when the benefits claimed or payments obtained have a value of ten thousand dollars or more, shall be imprisoned, with or without hard labor, for not more than ten years, or fined not more than ten thousand dollars, or both.

(2) Whoever violates any provision of this Section, when the benefits claimed or payments obtained have a value of two thousand five hundred dollars or more, but less than a value of ten thousand dollars shall be imprisoned, with or without hard labor, for not more than five years, or fined not more than five thousand dollars, or both.

(3) Whoever violates any provision of this Section, when the benefits claimed or payments obtained have a value of less than two thousand five hundred dollars, shall be imprisoned for not more than six months or fined not more than five hundred dollars, or both.

(4) Notwithstanding any provision of law to the contrary which defines "benefits claimed or payments obtained", for purposes of Subsection C of this Section, the definition of "benefits claimed or payments obtained" shall include the cost or value of indemnity benefits, and the cost or value of health care, medical case management, vocational rehabilitation, transportation expense, and the reasonable costs of investigation and litigation.

D. In addition to the criminal penalties provided for in Subsection C of this Section, any person violating the provisions of this Section may be assessed civil penalties by the workers' compensation judge of not less than five hundred dollars nor more than five thousand dollars, and may be ordered to make restitution. Restitution may only be ordered for benefits claimed or payments obtained through fraud and only up to the time the employer became aware of the fraudulent conduct.

E. Any employee violating this Section shall, upon determination by workers' compensation judge, forfeit any right to compensation benefits under this Chapter.

Due to the severe and growing problem of fraud, clearly and unambiguously, the legislature enacted LSA - R.S. 23:1208, to provide for three separate and distinct remedies to be enforced against those

who found to have committed fraud in violation of this section. Specifically, criminal penalties, civil penalties/actions, and forfeiture of benefits. While the forfeiture of benefits set forth under LSA - R.S. 23:1208 (E) is mandatory, the imposing of criminal and civil penalties under LSA - R.S. 23:1208 (C) and (D) respectively are discretionary.

Therefore, as criminal penalties have not been imposed as of this date under La R.S. 1208(C), this is not an issue at hand in this application. Likewise, as Gregory Taylor was found to have violated La R.S. 1208, the mandatory forfeiture of all benefits shall be imposed. Therefore, La R.S. 1208(E) is also not an issue at hand in this application.

The issue in this application deals with the interpretation of 1208(D). The workers' compensation judge exercised her authority and awarded U.S. Specialty Insurance Company and Bridgfield Insurance Company restitution as set forth under La R.S. 1208(D). The Second Circuit affirmed Bridgfield's award but remanded the matter to the trial court to determine the appropriate restitution to be awarded to U.S. Specialty Insurance Company. Applicant now contends that restitution to the parties in this instance is improper.

As noted, workers' compensation fraud is a severe and growing problem in Louisiana. Therefore, it is only reasonable to assume that La R.S. 23:1208 (C), (D) and (E) were enacted as a deterrent. It is undisputed that workers' compensation benefits paid out by an Employer and/or Insurer should be subject to reimbursement under a restitution award. Under the Applicant's reasoning, though, a restitution award can only consist of reimbursement for those workers' compensation benefits paid out by an Employer and/or Insurer and nothing more. Applicant contends that in no event shall litigation expenses and attorney's fees be included in any restitution award. What kind of deterrence system does this create?

Specifically, a claimant can file a claim alleging an on the job injury. From day one, the Employer/Insurer has the evidence and takes the position that such claim is fraudulent and denies payment of any and all workers' compensation benefits. The matter results in a trial in which the judge rules that the claimant violated La. R.S. 23:1208 and therefore forfeited his entitlement to benefits. As a result of the trial, the judge also determines that restitution is in order. Under the Applicant's contention, as the Employer/Insurer did not payout any benefits, they would not be entitled to any restitution whatsoever. Essentially, claimant had a free ride without any risk or recourse but a chance at a substantial award.

This is essentially what happened in this instant case. U.S. Specialty denied the September 14, 2001, claim from the onset and failed to pay any workers' compensation benefits. An extensive investigation was conducted and a significant amount of money was expended by both U.S. Specialty Insurance Company and Bridgefield Insurance Company. The ultimate result was a finding that Gregory Taylor committed fraud. Now the applicant contends that U.S. Specialty Insurance Company has no recourse against the claimant. This is the very same claimant that it had already paid out over \$40,000.00 in workers' compensation benefits.

The Second Circuit's interpretation as discussed in its opinion is much more reasonable although not complete. Specifically, the remedy of restitution for "benefits made or payments obtained" as provided in 23:1208(D) is defined in subsection (C)(4), of the statute, namely, "the cost or value of indemnity benefits, and the cost or value of health care, medical case management, vocational rehabilitation, transportation expenses, and reasonable costs of investigation and litigation." *Taylor v. Tommie's Gaming*, 878 So.2d 853, 38,568 (La. App. 2 Cir. 6/25/04); *Yarnell Ice Cream Co. v. Allen*, 33,020 La. App.2d Cir.5/10/00), 759 So.2d 1066, writ granted, 00-1520 (La.9/15/00), 767 So.2d 699, order recalled, 00-1520 (La.1/17/01), 777 So.2d 472. Therefore, not only would the workers' compensation benefits be subject to restitution, so would the attorney's fees and other costs associated with the litigation.

Further, in this instance, the Second Circuit stated that the calculation of the "benefits made or payments obtained" should be calculated from September 14, 2001, the date of the alleged incident in question. Due to such, they have remanded this matter back to the lower court to decipher what expenses, benefits and costs were incurred and when. However, this is where we differ in opinions and contend that such restitution should not be limited from September 14, 2001.

As previously discussed, it is undisputed that a restitution award will always consist of reimbursement for those workers' compensation benefits paid out by an Employer and/or Insurer. As the Applicant stated in his Disputed Claim for Compensation against U.S. Specialty Insurance Company, "The alleged injuries and/or disability sued for herein disputed claim of Taylor are the result of and caused by an accident which occurred on November 9, 2000." See Record pg. 41. Clearly, his claim against U.S. Specialty Insurance Company hindered on the November 2000 accident. Therefore, it only makes sense that if everyone is in agreement that the workers' compensation judge can order restitution of workers' compensation benefits, such award should

include all such benefits, including those paid with regards to the November 9 ,2000 accident. Moreover, the lower court determined that Taylor had made specific misrepresentations with regards to injuries to his neck prior to November of 2000.

**CONCLUSION**

With respect to the judgment, the Trial Court's original judgment should be upheld without modification and the award of restitution to Specialty should be upheld in the amount of \$62,340.37.

RESPECTFULLY SUBMITTED,

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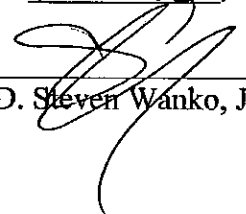
**VERIFICATION**

I HEREBY CERTIFY that a copy of the above and foregoing has been served on:

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Slidell, Louisiana, this 31 of January, 2005.

  
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D. Steven Wanko, Jr.