

From: Don Drinko  
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### **Gallagher Sharp Shop Talk: Workers' Compensation**

**Question: Can a lawsuit against the Industrial Commission of Ohio regarding the amount of compensation paid to permanent total disability (PTD) claimants be brought in a state court?**

In Ohio, legal claims against the state seeking monetary damages must be brought in Ohio's Court of Claims, while claims sounding in "equity" (generally, those seeking to address "wrongs" rather than to receive damages) may be filed in state courts. Recently, the Supreme Court of Ohio decided *Measles, et al. v. Indus. Comm. Of Ohio* (2011), 128 Ohio St.3d 458, which considered whether a dispute arising from an agreement to reduce PTD payments in the future in exchange for the payment of a lump sum was an action at law or one "in equity."

*Measles* involved multiple claimants who were granted permanent total disability benefits pursuant to R.C. 4123.58. These claimants applied to receive a portion of their benefits through lump-sum "advance" payments pursuant to R.C. 4123.64(A). The application for lump-sum payments contains a provision that states that receiving an advance will permanently reduce the claimant's weekly benefit going forward. The applications were approved and payments made, but several years later the claimants filed suit against the Industrial Commission in state court, arguing that the reduction of weekly benefits should have stopped when the aggregate value of weekly reductions equaled the value of the lump-sum advancements. The complaint was styled as sounding "in equity," and the amounts owed were described as "restitution." The trial court dismissed the action for lack of subject matter jurisdiction, finding that the claims were essentially based on a contract and therefore must be brought in the Court of Claims. Claimants appealed, and the Eighth District Court of Appeals reversed, finding that the action sounded in equity because the claimants had "not exclusively plead claims for money due and owing under a contract." The Commission appealed this ruling to the Supreme Court of Ohio.

The Supreme Court reversed and reinstated the trial court's ruling that jurisdiction remained exclusively in the Court of Claims. It reasoned that a court must look to and rely on the "basis for the plaintiff's claim and the nature of the underlying remedies sought," not just the phrasing in the complaint. *Cristino v. Ohio Bur. of Workers' Comp.* (2008), 118 Ohio St.3d 151. Despite claimants' attempts to classify their claims as restitution (an equitable term), a claim for restitution arising from a contract dispute can only be described as damages, and thus constitutes an action in law. The Court concluded that the claimants were disputing the applicability of one or more terms of the lump-sum advancement agreement they signed, no matter how it was characterized in the complaint.

There are many good reasons to keep suits against the Industrial Commission in the exclusive jurisdiction of the Ohio Court of Claims as it eliminates venue-shopping and the need to defend multiple "equity" actions arising from the same issue. If you have any specific questions, or would like to discuss this or any other workers' compensation issues, you can contact me or Adam Sadowski from our Toledo office.

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