

# MEMORANDUM

VIA EMAIL (LSCHAFF@OHIOMFG.COM AND RBRUNDRETT@OHIOMFG.COM)

**TO:** Lisa Schaff and Robert Brundrett

**FROM:** Sue A. Wetzel

**DATE:** December 8, 2016

**RE:** Recent Supreme Court Decision:

*State ex rel. Ohio Presbyterian Retirement Servs., Inc. v Indus. Comm.*,  
**2016-Ohio-8024**

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In a 5-2 opinion, the Supreme Court found that the Ohio Industrial Commission (“Commission”) abused its discretion by considering Sherry L. Redwine’s application for permanent partial disability (“PPD”) compensation in the same claim in which she was receiving permanent total disability (“PTD”) compensation, holding specifically that state law does not permit an award of PPD compensation to an injured worker who has already been awarded PTD compensation in the same claim.

Redwine filed a workers’ compensation claim after her Aug. 13, 2003 injury. The Commission awarded her PTD benefits based on her psychological condition. Subsequently, Redwine applied for PPD compensation based on the physical conditions allowed in her claim. The Commission concluded Redwine was not barred from concurrent compensation for PPD if the claim was based on conditions that were not the basis for the prior finding of PTD in the same claim. Redwine’s employer, the Ohio Presbyterian Retirement Services Inc. (“Ohio Presbyterian”), challenged the ruling in the Tenth District Court of Appeals and asked the court to vacate the Commission’s order. The appeals court denied the writ of mandamus and Ohio Presbyterian appealed to the Supreme Court.

The Supreme Court acknowledged that the Ohio General Assembly has allowed the payment of concurrent awards in limited circumstances. However, the Court found that the state statutes involved in this case, specifically O. R.C. §§ 4123.57 and 4123.58, do not “expressly authorize concurrent payment of [PPD] and [PTD] compensation.”

In support of this conclusion, the Supreme Court cited to a 1992 case (*State ex rel. Murray v. Indus. Comm.*) to point out that the express absence of any reference to concurrent payment of benefits in the statute “evinces a legislative intent to prohibit simultaneous receipt of these benefits.” The *Murray* decision also held that a claimant may not currently receive compensation for [PPD] and [PTD] for the same injury within the context of one claim. The Supreme Court further reasoned that “[o]ur conclusion is also reinforced by the purpose of permanent-total disability compensation – to compensate for the impairment of earning capacity. It logically follows that a claimant who is receiving permanent-total disability compensation is ineligible for concurrent permanent-partial disability compensation based on a different condition in the same claim.” The Supreme Court’s decision overturns the Tenth District Court of Appeal’s decision

Also important to note is that Justices Pfeifer and O’Neill dissented from the majority opinion specifically stating, “I acknowledge that the statutory scheme also does not specifically allow concurrent benefits... Unlike the majority, I do not assume that that means concurrent benefits are prohibited. Instead, I read the statutory scheme liberally in favor of the injured claimant, as required by R.C. 4123.95.”

SAW/