

Judgment rendered May 16, 2003.

No. 37,167-WCA

ON REHEARING

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

ALMA M. JONES

Plaintiff-Appellant

versus

GENERAL MOTORS
CORPORATION

Defendant-Appellee

* * * * *

Per Curiam on Rehearing

Originally Appealed from the
Office of Workers' Compensation, District 1W
Parish of Caddo, Louisiana
Trial Court No. 99-05288

Honorable Rosa Whitlock, Judge

* * * * *

ALEX S. LYONS

Counsel for
Appellant

LUNN, IRION, SALLEY, CARLISLE
& GARDNER

Counsel for
Appellee

By: Walter S. Salley
J. Martin Lattier

* * * * *

Before BROWN, STEWART, GASKINS,
MOORE and KOSTELKA (Pro Tempore), JJ.

PER CURIAM

On application of Alma Jones (“Jones”) for rehearing, this Court now clarifies its reasons for holding that General Motors Corporation (“GM”) is entitled to take a dollar-for-dollar credit against compensation amounts paid under its disability plan.

In its original opinion, this Court relied on La. R.S. 23:1225(C)(3) as authority to uphold the GM reimbursement agreement. Upon further consideration, we find that this portion of the statute is inapplicable to this controversy but is instead designed to allocate the offset to the compensation insurer where both the insurer and a disability plan seek to employ the offset.

The question presented by this case is whether an employer may enforce a reimbursement agreement when that agreement causes the worker’s recovery of benefits from multiple sources to go below 66 2/3 percent of the worker’s average weekly wage.

In *Hughes v. General Motors*, 469 So. 2d 369 (La. App. 2d Cir. 1985), this Court enforced a nearly identical reimbursement agreement and allowed the employer to take a dollar-for-dollar credit against workers’ compensation for sums paid under an employer-funded group disability plan. The version of La. R.S. 23:1225 that would have applied in *Hughes* did not include employer-funded disability benefit plans as an item to be offset, and this Court did not consider the application of this statute. More recently, this Court has considered the offset but not in the context of a specific reimbursement agreement. *See, e.g., Feild v. General Motors*, 36,339 (La. App. 2d Cir. 09/18/02), 828 So. 2d 150; *Bank of Winnfield and Trust Co. v. Collins*, 31,473 (La. App. 2d Cir. 02/24/99), 736 So. 2d 263; *Holden v. International Paper Corporation*, 31,104 (La. App. 2d Cir. 10/28/98), 720 So. 2d 442,

writ denied, 1998-2956 (La. 01/29/99), 736 So. 2d 834 and *G.N.B. v. Jones*, 29,779 (La. App. 2d Cir. 08/20/97), 699 So. 2d 466.

La. R.S. 23:1225(C)(1) specifies in part that when a worker receives benefits from more than one listed source, compensation benefits shall be reduced “unless there is an agreement to the contrary between the employee and the employer liable for payment of the workers’ compensation benefit, so that the aggregate remuneration from Subparagraphs (a) through (d) of this Paragraph shall not exceed sixty-six and two-thirds percent of his average weekly wage.”

In the instant case, the employer and employee have agreed that the employee must repay disability program benefits to the full extent that the employee is entitled to compensation benefits and not just to the extent that the aggregate exceeds the statutory cap.

We believe that by the addition of La. R.S. 23:1225(C)(1)(c), the legislature intended to broaden the scope of the benefit coordination scheme. The purpose of the scheme is to ensure that an employee experiencing only one wage loss receives only one wage loss benefit from the employer. *Wal-Mart Stores, Inc. v. Keel*, 2001-3013 (La. 04/03/02), 817 So. 2d 1. *See also, Al Johnson Const. Co. v. Pitre*, 98-2564 (La. 05/18/99), 734 So. 2d 623. To that end, the legislature specified that a worker may not receive more than 66 2/3 percent of his average weekly wage from the combination of the specified sources of benefits.

Jones argues that the reimbursement agreement is against public policy and unenforceable because it reduces her aggregate remuneration below 66 2/3 percent of her average weekly wage. *See also*, La. R.S. 23:1225(C)(4). However, the statute does not specify that the aggregate remuneration to the

worker must be *equal to* 66 2/3 percent of the worker's average weekly wage; instead, it prohibits remuneration *exceeding* that amount in the absence of an agreement to the contrary. The statute does not explicitly place a lower limit on the amount of compensation benefits that must be awarded; other statutes establish that amount. Instead, the statute places a cap on the remuneration to the worker that may be varied by agreement. Accordingly, the reimbursement agreement does not violate public policy and is thus enforceable.

Jones further contends that the reimbursement agreement is unenforceable due to *Great-West Life Annuity Insurance Company v. Knudson*, ___ U.S. ___, 122 S. Ct. 708, 151 L. Ed. 2d 635 (2002). In *Great-West*, the supreme court concluded that ERISA allowed a benefit plan only to seek equitable relief, and thus the plan could not bring an action for money damages against the beneficiary.

In *Martco Partnership v. Lincoln National Life Insurance Company*, 86 F.3d 459 (5th Cir. 1996), the court concluded that La. R.S. 23:1225(A) and (C)(1)(c) are not preempted by ERISA. Because we find that the reimbursement agreement is authorized by and enforceable under Louisiana workers' compensation law, the Workers' Compensation Judge ("WCJ") may enforce the agreement by reducing GM's compensation obligation. In the instant case, GM is attempting to enforce its rights with regard to its compensation obligation and is not seeking a money judgment in favor of the disability plan.

In all other respects, this Court's original opinion is maintained.