SUPREME COURT OF LOUISIANA

NO. 98-C-2564

AL JOHNSON CONSTRUCTION COMPANY AND LOUISIANA INSURANCE GUARANTY ASSOCIATION

V.

DONALD PITRE

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, THIRD CIRCUIT, PARISH OF ST. LANDRY

MARCUS, Justice, dissenting

I agree with the majority that pursuant to La. R.S. 23:1225A, Louisiana may claim a reverse offset only with respect to workers' compensation benefits payable for "permanent total disability." This provision was enacted in 1978 and allows Louisiana employers to claim a credit in cases where a worker is also entitled to certain benefits under the federal Social Security System, so that the combined benefits shall not exceed 80% of the worker's average weekly wage. The federal government allowed states to enact such reverse offset provisions until a cut-off date of February 18, 1981. But for the enactment of La. R.S. 23:1225A, the credit in such cases would be taken by the federal government.

Because Louisiana did not timely adopt a reverse offset provision as to any other category of disability benefit payments, the federal government is entitled to claim the credit to the extent provided by federal law against benefits otherwise payable under the federal system such that a worker's total benefits from the state and federal systems does not exceed 80% of average weekly wages in cases other than "permanent total disability". This credit is taken by reducing the amount otherwise payable by the federal government.

In 1983, Louisiana's legislature enacted a statute providing that benefits payable under Louisiana's compensation system will be reduced in the event a worker is getting benefits from certain other enumerated sources, such that the total benefits shall not exceed 66 2/3 % of the worker's average weekly wage. La. R.S. 23:1225C. Since this statute was passed after 1981, it is clearly not a reverse offset provision and cannot affect any credit the federal government is entitled to take to reduce federal payments such that benefits do not exceed 80% of average weekly wages. However, I see no legal impediment to our legislature's determination that Louisiana employers

should be able to get a credit against payments otherwise due by them to further reduce the total benefits payable from 80% to 66 2/3 % of average weekly wages. That was the clear intent of the legislature in 1983 when it enacted La. R.S. 23:1225C.

Moreover, I do not agree that our reasoning in Garrett v. Seventh Ward Gen. Hosp., 95-0017 (La. 9/22/95), 660 So. 2d 841, was infirm or that our holding therein should be reversed. In Garrett, we determined that the reduction stipulated in La. R.S. 23:1225C(1)(c) was intended to take into account federal Social Security disability compensation benefits as well as payments under private systems. The fact that the federal government has claimed a credit to reduce the overlap of disability benefits so that workers do not get more than 80% of average weekly wages has no bearing whatsoever on whether the state legislature intended to further reduce the overlap of all disability benefits by reducing the state benefits payable so that the total amount paid does not exceed 66 2/3% of the average weekly wage. Our interpretation in Garrett insures that all recipients of all of the types of benefits described under La. R.S. 23:1225C are treated the same and that all such benefits are coordinated in the same way. That being the case, I would have reached the issue upon which we originally granted writs.

Accordingly, I respectfully dissent.