

STATE OF MICHIGAN
IN THE SUPREME COURT

ROBERT ARBUCKLE, Personal Representative
of the Estate of CLIFTON M. ARBUCKLE,

Appellee,

Supreme Court No. 151277
Court of Appeals No. 310611

v.

MCAC LC No. 11-000043

GENERAL MOTORS LLC,

Appellant.

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**SUPPLEMENTAL BRIEF IN SUPPORT OF APPELLANT GENERAL MOTORS LLC'S
APPLICATION FOR LEAVE TO APPEAL**

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STATEMENT OF QUESTIONS INVOLVED¹

- I. Whether Arbuckle's action is preempted by federal law?

The Court of Appeals Answered "No."

The MCAC Did Not Directly Address the Issue.

Arbuckle Answers "No."

GM Answers "Yes."

- II. Whether Arbuckle's action is governed by state law or federal law?

The Court of Appeals Answered "State Law."

The MCAC Did Not Definitively Decide the Issue.

Arbuckle Answers "State Law."

GM Answers "Federal Law."

¹ The questions presented in this Court's Order, dated December 23, 2015, are interdependent. In other words, the answer to the first question dictates the answer to the second. *See* Michigan Supreme Court Order, dated December 23, 2015, **Exhibit 1**.

INTRODUCTION

Arbuckle's claim for non-coordinated workers' compensation benefits is inextricably intertwined with the interpretation of the 1990 CBA.² As discussed in detail in GM's Application, Arbuckle contends that GM violated MCL 418.354 by coordinating his workers' compensation benefits with his employer-funded retiree disability benefits **in breach of the 1990 CBA**. Consequently, Arbuckle's claim, which he artfully attempts to present as a state law cause of action, is, in reality, a federal claim for breach of a collective bargaining agreement wholly preempted and governed by federal law.

ARGUMENTS

I. The Resolution of Arbuckle's Claim for Non-Coordinated Workers' Compensation Benefits Requires an Interpretation of the Terms of the 1990 CBA – Section 301 of the LMRA Mandates Complete Preemption of Arbuckle's Claim by Federal Law.

A. The Well-Pleaded Complaint Rule Does Not Apply.

In general, a plaintiff is the master of his claim such that he has the power to decide whether to rely on state or federal law in support of his cause of action. *See Berera v Mesa Medical Group, PLLC*, 779 F 3d 352, 357 (CA 6 2015). Under circumstances not present here, a plaintiff may avoid federal preemption by exclusively advancing state law claims on the face of his claim. *Id.*, at 358. There is, however, a potent exception to this rule known as the "complete preemption" or "artful pleading" doctrine. The complete preemption/artful pleading doctrine compels the application of federal law to claims such as Arbuckle's that appear on the surface as state law claims, but are, when carefully analyzed, actually claims arising out of the breach of a collective bargaining agreement. *See Caterpillar, Inc v Williams*, 482 US 386, 393-394, 107 S Ct 2425, 96 L Ed 2d 318 (1987); *Allis-Chalmers Corp v Lueck*, 471 US 202, 208-212, 105 S Ct

² Defined terms in this Supplemental Brief have the same meaning as those in GM's Application for Leave to Appeal and the Reply in Support of GM's Application for Leave to Appeal.

1904, 85 L Ed 2d 206 (1985); *Berera, supra*, at 358; *Jones v General Motors Corp*, 939 F 2d 380, 382 (CA 6 1991); *Garbinski v General Motors LLC*, 2012 WL 1079924, *8 (ED Mich 2012) (unpublished) (“*Garbinski I*”), GM’s Application, Exhibit 9; *Garbinski v General Motors LLC*, 521 Fed Appx 549 (CA 6 2013) (unpublished) (“*Garbinski II*”), GM’s Application, Exhibit 11.

B. The Controlling Doctrine of Complete Preemption.

The doctrine of complete preemption provides that:

[o]nce an area of state law has been completely pre-empted (*sic*), any claim purportedly based on that pre-empted (*sic*) state law is considered, from its inception, a federal claim, and therefore arises under federal law.

Caterpillar, Inc, supra, at 393. Complete preemption “is applied primarily in cases raising claims preempted by §301 of the LMRA.” *Id.*

Pursuant to 29 USC §185(a) (*i.e.* Section 301 of the LMRA):

[s]uits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce. . . may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 USC §185(a). Critically:

[t]he Supreme Court has interpreted this language to require federal pre-emption (*sic*) of state law-based actions because federal law envisions a national labor policy that would be disturbed by conflicting state interpretations of the same CBA. Pre-emption (*sic*) occurs when a decision on the state claim is inextricably intertwined with consideration of the terms of the labor contract and when application of state law to a dispute requires the interpretation of a collective bargaining agreement.

Jones, supra, at 382.³ Said another way:

³ “The interests in interpretive uniformity and predictability that require that labor-contract disputes be resolved by reference to federal law also require that the meaning given a contract phrase or term be subject to uniform federal interpretation.” *Watts v United Parcel Service*, 701 F 3d 188, 191 (CA 6 2012).

a suit in state court alleging a violation of a provision of a labor contract must be brought under §301 and be resolved by reference to federal law. A state rule that purports to define the meaning or scope of a term in a contract suit therefore is pre-empted (*sic*) by federal labor law.

*Allis-Chalmers Corp, supra, at 210.*⁴

Importantly:

[t]he pre-emptive (*sic*) force of §301 is so powerful as to displace entirely any state cause of action for violation of contracts between an employer and a labor organization. Any such suit is purely a creature of federal law, notwithstanding the fact that state law would provide a cause of action in the absence of §301.

Id.

C. The Sixth Circuit’s Two-Part Test for Determining Complete Preemption Confirms Complete Preemption of Arbuckle’s Purported State Law Claim.

The “pre-emptive (*sic*) effect of §301 applies to state-law claims that do not facially allege a breach of [a collective bargaining agreement].” *Jones, supra, at 384.* To determine whether §301 of the LMRA completely preempts Arbuckle’s self-styled state law workers’ compensation claim, the Sixth Circuit utilizes the following a two-step test:

[f]irst, we examine whether proof of the state law claim requires interpretation of collective bargaining agreement terms. Second, we ascertain whether the right claimed by the plaintiff is created by the collective bargaining agreement or by state law. If the right both arises from state law and does not require contract interpretation, then there is no preemption. However, if neither or only one criterion is satisfied, §301 preemption is warranted.

*Alongi v Ford Motor Co, 386 F 3d 716, 724 (CA 6 2004)*⁵; *Brittingham v General Motors Corp, 526 F 3d 272, 279 (CA 6 2008).* Under the two-part test set forth in *Alongi* (a case cited in

⁴ It is well-settled that “state law claims arising from the breach of a collective bargaining agreement are generally preempted by the LMRA” *Garbinski I, supra, at *8.* Notably, “[s]tate law does not exist as an independent source of private rights to enforce collective bargaining contracts.” *Caterpillar, Inc. supra, at 394.*

⁵ “Section 301’s sphere of complete pre-emption (*sic*) extends to state law claims that are substantially dependent on analysis of a collective bargaining agreement.” *Alongi, supra, at 724.*

Arbuckle's Response to GM's Application), *supra*, and subsequently echoed by the Sixth Circuit in *Brittingham, supra*, Arbuckle's claim that GM improperly coordinated his workers' compensation benefits with his GM-funded disability pension benefits is wholly preempted by §301 of the LMRA.

Federal preemption is mandated because, as addressed in depth in GM's Application: (1) proof of Arbuckle's ostensible state law claim for non-coordinated workers' compensation benefits requires interpretation of the 1990 CBA and (2) the right to non-coordinated benefits invoked by Arbuckle is created, if at all, by the 1990 CBA, not state law. Thus, Arbuckle cannot demonstrate that his alleged right to non-coordination of benefits **both** arises from state law (*i.e.* MCL 418.354(14)) **and** does not require interpretation of the 1990 CBA. *See Alongi, supra*, at 724; *Garbinski, supra*, at *8-9.

With respect to the first prong of the Sixth Circuit's test, proof of Arbuckle's purported state law claim requires interpretation of the 1990 CBA because Arbuckle derives his alleged right to non-coordinated benefits exclusively from the language of the 1990 Letter of Agreement, which forms an integral part of the 1990 CBA. *See* 1990 Letter of Agreement, GM's Application, Exhibit 2.⁶ Indeed, Magistrate Kenneth Birch of the Workers' Compensation Board of Magistrates recognized that:

[A]rbuckle had a contract at the time of his retirement which prohibited the coordination of disability pension benefits and **he brought this action to enforce the provisions of that contract his representative negotiated in 1990.**"

GM's Application, Exhibit 7, at 9. The contract "his representative negotiated in 1990" is the 1990 CBA.

⁶ Pursuant to the 1990 Letter of Agreement, GM agreed with the UAW not to coordinate workers' compensation benefits with disability retirement benefits for a finite period of time (*i.e.* a maximum of 3 years). *See* GM's Application, Exhibit 2.

With respect to the second prong of the Sixth Circuit's preemption test, the right to non-coordinated benefits claimed by Arbuckle, if it existed, which it does not, would be wholly derived from the 1990 CBA, not state law. MCL 418.354 standing alone does not entitle Arbuckle to receive workers' compensation benefits free from coordination for any time-period. *See* MCL 418.354. Under Michigan law, absent a contractual agreement to the contrary, coordination of workers' compensation benefits is mandatory. *See* MCL 418.354(1); *Smitter v Thornapple Twp*, 494 Mich 121, 125 (2013). Thus, Arbuckle's untenable position that he should receive lifetime non-coordinated workers' compensation benefits necessarily arises out of his misapprehension of and misplaced reliance on the 1990 CBA, not state law. Artful pleading of his claim does not allow Arbuckle to avoid this inconvenient fact.

D. GM Did Not Raise the 1990 CBA as a Defense to Arbuckle's Claim - Judge O'Mera's Unpublished District Court Opinion in *Savage v. GM* Lacks Precedential Value and is Not Dispositive – The Court Should Follow *Garbinski I* and *Garbinski II*.

Despite Arbuckle's repeated insistence, Judge O'Mera's September 21, 2010 unpublished, untested and non-binding Opinion and Order in *Savage v General Motors*, No 10-cv-12372 (ED Mich Sept 21, 2010), should not affect the outcome of this case. *See* Arbuckle's Response to GM's Application, Exhibit 1. This is particularly true when Arbuckle was **not** a party to *Savage*.

In *Savage*, Judge O'Mera declined to employ the complete preemption doctrine because, according to his erroneous reasoning, plaintiffs in that case raised the breach of a collective bargaining agreement as a defense to the plaintiffs' primary claims to enforce orders awarding each of them workers' compensation benefits. *See Savage*, at 4. While GM agrees with the principle that complete preemption does not apply when a defendant raises a collective

bargaining agreement as a defense to a plaintiff's purely state law claim - that is not what occurred in the instant action.

Here, as delineated in GM's prior briefs before this Court and as acknowledged by Magistrate Birch, *supra*, Arbuckle brought this action to enforce contractual provisions of the 1990 CBA, not an order issued by a Workers' Compensation Magistrate. *See* GM's Application, Exhibit 7, at 9. Arbuckle's affirmative reliance on the 1990 CBA as the basis for his claim commands the application of the complete preemption doctrine and the adjudication of his claim under federal law.

Such an application of the complete preemption doctrine is wholly consistent with *Garbinski I, supra*, in which on facts substantially identical to those here, then Chief Judge Gerald Rosen determined, in 2012, that plaintiffs' claims under Michigan law (MCL 418.354(14)) for improper coordination of workers' compensation benefits with disability insurance benefits were completely preempted by the LMRA. *See Garbinski I, supra*. The Sixth Circuit subsequently affirmed Judge Rosen's ruling raising its persuasive value to a level of significance far-greater than that of the unproven Opinion and Order in *Savage, supra*. *See Garbinski II, supra*.

II. Because Arbuckle's Claims are Completely Preempted by the LMRA, Federal Law Governs the Adjudication of Arbuckle's Claim for Non-Coordinated Workers' Compensation Benefits.

In its Order, dated December 23, 2015, this Court asked the parties to submit supplemental briefs addressing: (1) whether Arbuckle's action is preempted by federal law and (2) whether Arbuckle's action is governed by state or federal law. *See* Michigan Supreme Court Order, dated December 23, 2015, **Exhibit 1**. As discussed in detail above and in GM's prior briefs to this Court, Arbuckle's claim is subject to the complete preemption doctrine and,

therefore, federal law governs the adjudication of his claim to receive non-coordinated workers' compensation benefits. Should this Court or another tribunal correctly determine that GM may coordinate Arbuckle's workers' compensation benefits with his employer-funded retiree disability benefits, the calculation of the amount of those benefits would take place in accordance with Michigan law.

CONCLUSION

A thorough analysis of Arbuckle's claim readily reveals that he seeks relief not for a failure to abide by state workers' compensation law, but for a purported breach of a collective bargaining agreement between GM and the UAW, namely, the 1990 CBA. Because Arbuckle predicates the instant action on an alleged breach of a collective bargaining agreement, Section 301 of the LMRA mandates complete preemption of Arbuckle's claim and its adjudication under federal law. Arbuckle's artful pleading does not allow him to obviate the firmly-established complete preemption doctrine.

This Court should peremptorily reverse the erroneously decided Opinion of the Court of Appeals, dated February 10, 2015, or, in the alternative grant GM's Application.

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Dated: February 17, 2016

PROOF OF SERVICE

The undersigned states that on February 17, 2016, he served copies of the *Supplemental Brief in Support of Defendant-Appellant's General Motors LLC's Application for Leave to Appeal* and this *Proof of Service* via electronic and U.S. mail upon Robert J. MacDonald at lawyers@disabledworker.net.

s/Gregory M. Krause
Gregory M. Krause

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EXHIBIT 1

Order

Michigan Supreme Court
Lansing, Michigan

December 23, 2015

Robert P. Young, Jr.,
Chief Justice

151277

Stephen J. Markman
Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Joan L. Larsen,
Justices

ROBERT ARBUCKLE, Personal Representative
of the Estate of Clifton M. Arbuckle,
Plaintiff-Appellee,

v

SC: 151277
COA: 310611
MCAC: 11-000043

GENERAL MOTORS LLC,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the February 10, 2015 judgment of the Court of Appeals is considered. We direct the Clerk to schedule oral argument on whether to grant the application or take other action. MCR 7.305(H)(1). The parties shall file supplemental briefs within 42 days of the date of this order addressing: (1) whether the plaintiff's action is preempted by federal law, and (2) whether the plaintiff's action is governed by state law or federal law. The parties should not submit mere restatements of their application papers.

The Eastern District of Michigan Chapter of the Federal Bar Association, the Labor and Employment Law Section of the Federal Bar Association, the Michigan Chamber of Commerce, and the Workers' Compensation Law and the Labor and Employment Law Sections of the State Bar of Michigan are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 23, 2015

Clerk