

**IN THE  
SUPREME COURT OF OHIO**

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**STATE ex rel. CORNELIUS J. CLEMONS**

Relator,

vs.

**OHIO BUREAU OF WORKERS' COMP. Et al.**

Respondent,

Case no. 2021-1567

**ORIGINAL ACTION IN MANDAMUS**

**MOTION FOR ORC §§2731.06/ 2731.07**

**ALTERNATIVE WRIT OF MANDAMUS**

**Entry upon Journal/ &**

**Issuance of Alternative Writ of Mandamus**

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**MOTION FOR ORC §§2731.06/ 2731.07  
ENTRY OF ALTERNATIVE WRIT OF MANDAMUS UPON JOURNAL &  
ISSUANCE OF ALTERNATIVE WRIT OF MANDAMUS OF RELATOR**

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In pursuance of Ohio Constitution Section 16 of Article I., and Ohio Revised Code Sections 2731.06 and 2731.07; Relator moves this Court to make issuance of Alternative Writ of Mandamus ordering Respondent to wit: disburse the payment of compensation unto Relator valued in the indisputable amount certain of \$7 Million with mandated O.R.C. §§1343.03(A & B) and 5703.47, Prejudgment and Post-judgment interest of 3% from due date, 12/21/2021, until paid, therefrom the self-insuring employers' guaranty fund; via deposit into said Checking Account, provided in Complaint's attached Exhibit F; or either, show cause why the act should not be performed on or before the 5<sup>th</sup> day after receipt of this order; and to make entry of allowance of Alternative Writ of Mandamus upon the Court's Journal. A memorandum in support of this Motion is attached.

Respectfully submitted,

/s/ Cornelius J. Clemons

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## **MEMORANDUM IN SUPPORT**

Relator has alleged that Respondent in this case has the clear legal duty pursuant Ohio Constitution Section 35 of Article II, O.R.C. §§ {4121.12 (F)(14)}, {4121.121 (B)(1)}, {4121.39 (B) & (D)}, {4123.32 (E)}, {4123.35(B)}, {4123.351 (A), and (D)(1)}, and {4123.74}; upon self-insuring private employer Kenco Logistics LLC (hereafter Kenco)'s default in individually providing Relator with payment of compensation, in pursuance of the obligation of Ohio Constitution Section 35 of Article II.; to disburse the payment of compensation unto Relator valued in the indisputable amount certain of \$7 Million with mandated O.R.C. §§1343.03(A & B) and 5703.47, Prejudgment and Post-judgment interest of 3% from due date, 12/21/2021, until paid, therefrom the self-insuring employers' guaranty fund; in covering the default in payment of Kenco.

The basis of Relator's Complaint is for the enforcement of the obligation of contract of Ohio Constitution Section 35 of Article II., in pursuance of Relator having the security of his due property; and to have Relator have the possession of his property through means of due process of law; as said operations are required by the Ohio Constitution and laws; and the federal statutory declaratory decrees of 42 U.S.C. §§1981., & 1982.

Ohio Revised Code Section 2731.02 relevant portion provides:

The writ of mandamus may be allowed by the supreme court, the court of appeals, or the court of common pleas and shall be issued by the clerk of the court in which the application is made. Such writ may issue on the information of the party beneficially interested.

Such writ shall contain a copy of the petition, verification, and order of allowance.

Ohio Revised Code Section 2731.06 relevant portion provides:

When the right to require the performance of an act is clear and it is apparent that no valid excuse can be given for not doing it, a court, in the first instance, may allow a peremptory mandamus. In all other cases an alternative writ must first be issued on the allowance of the court, or a judge thereof.

Ohio Revised Code Section 2731.07 relevant portion provides:

The allowance of the writ of mandamus, and an order that the defendant, immediately upon service, do the act required to be performed, or, when an alternative writ is allowed, that he do the act or show cause before the court, at a specified time and place, why he does not do the act, shall be entered on the journal.

Ohio Revised Code Section 2731.08 relevant portion provides:

The writ of mandamus shall be served upon the defendant personally, by copy, by the sheriff or by a person specially authorized by the court or judge issuing the writ. Such officer or person must report his proceedings therewith to the court. When the service is made by a person not an officer, the return must be verified by his affidavit.

Ohio Constitution Section 35 of Article II relevant portion provides:

For the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational disease, occasioned in the course of such workmen's employment, laws may be passed establishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state, determining the terms and conditions upon which payment shall be made therefrom. Such compensation shall be in lieu of all other rights to compensation, or damages, for such death, injuries, or occupational disease, and any employer who pays the premium or compensation provided by law, passed in accordance herewith, shall not be liable to respond in damages at common law or by statute for such death, injuries or occupational disease. Laws may be passed establishing a board which may be empowered to classify all occupations, according to their degree of hazard, to fix rates of contribution to such fund according to such classification, and to collect, administer and distribute such fund, and to determine all right of claimants thereto.

Ohio Revised Code Section 4123.74 relevant portion provides:

Employers who comply with section 4123.35 of the Revised Code shall not be liable to respond in damages at common law or by statute for any injury, or occupational disease, or bodily condition, received or contracted by any employee in the course of or arising out of his employment, or for any death resulting from such injury, occupational disease, or bodily condition occurring during the period covered by such premium so paid into the state insurance fund, or during the interval the employer is a self-insuring employer, whether or not such injury, occupational disease, bodily condition, or death is compensable under this chapter.

Ohio Revised Code Section 4123.35(B) relevant portion provides:

(B) Employers who will abide by the rules of the administrator and who may be of sufficient financial ability to render certain the payment of compensation to injured employees or the dependents of killed employees, and the furnishing of medical, surgical, nursing, and hospital attention and services and medicines, and funeral expenses, equal to or greater than is provided for in sections 4123.52, 4123.55 to 4123.62, and 4123.64 to 4123.67 of the Revised Code, and who do not desire to insure the payment thereof or indemnify themselves against loss sustained by the direct payment thereof, upon a finding of such facts by the administrator, may be granted the privilege to pay individually compensation, and furnish medical, surgical, nursing, and hospital services and attention and funeral expenses directly to injured employees or the dependents of killed employees, thereby being granted status as a self-insuring employer. The administrator may charge employers who apply for the status as a self-insuring employer a reasonable application fee to cover the bureau's costs in connection with processing and making a determination with respect to an application.

Ohio Revised Code Section 4123.351 (A), and (D)(1) relevant portion provides:

(A) The administrator of workers' compensation shall require every self-insuring employer, including any self-insuring employer that is indemnified by a captive insurance company granted a certificate of authority under Chapter 3964. of the Revised Code, to pay a contribution, calculated under this section, to the self-insuring employers' guaranty fund established pursuant to this section. The fund shall provide for payment of compensation and benefits to employees of the self-insuring employer in order to cover any default in payment by that employer.

(D)(1) There is hereby established a self-insuring employers' guaranty fund, which shall be in the custody of the treasurer of state and which shall be separate from the other funds established and administered pursuant to this chapter. The fund shall consist of contributions and other payments made by self-insuring employers under this section. All investment earnings of the fund shall be credited to the fund. The bureau shall make disbursements from the fund pursuant to this section.

In Relator's Petition for Writ of Mandamus; Relator alleges that: (a) Relator was accidentally injured in the course of his employment with self insuring employer Kenco; (b) Relator was in pursuance of O.R.C. §§4123.74 & 4123.35(B)., withheld from holding Kenco liable to respond in damages at common law or by statute for any injury, or occupational disease, or bodily condition, received or contracted by Relator in the course of or arising out of his employment with Kenco; in exchange for Kenco assuming liability to individually make payment of compensation to Relator as such compensation is required by the Quid Pro Quo exchange of Ohio Constitution Section 35 of Article II; (c) Kenco has defaulted in individually making payment of compensation unto Relator; and (d) in pursuance of due process of law of Ohio Constitution Section 35 of Article II, and O.R.C. §§ 4123.351 (A), and (D)(1) the Bureau of Workers' Compensation has the clear legal duty upon Kenco's default in individually providing Relator with payment of compensation in pursuance of the obligation of Ohio Constitution Section 35 of Article II; to disburse the payment of compensation unto Relator valued in the indisputable amount certain of \$7 Million with mandated O.R.C. §§1343.03(A & B) and 5703.47, Prejudgment and Post-judgment interest of 3% from due date, 12/21/2021, until paid, therefrom the self-insuring employers' guaranty fund; in covering the default in payment of Kenco.

Relator's factual contentions: (a) that Relator has been determined to have all right as a valid claimant to the self-insuring guaranty fund; and (b) that Kenco has defaulted in individually making payment of compensation unto Relator; remains as the only basis for which must be ascertained prior to, as a matter of law of Ohio Constitution Section 35 of Article II, and O.R.C. §§ 4123.351 (A), and (D)(1), Respondent is shown to clearly have the clear legal duty as required by due process of law to wit: disburse the payment of compensation unto Relator valued in the indisputable amount certain of \$7 Million with mandated O.R.C. §§1343.03(A & B) and 5703.47, Prejudgment and Post-judgment interest of 3% from due date, 12/21/2021, until paid, therefrom the self-insuring employers' guaranty fund; via deposit into said Checking Account, provided in Complaint's attached Exhibit F.

It clearly appearing from Relator's Mandamus Complaint that: (a) Relator mandamus claim, as based upon law, may have merit; (b) Relator, as alleged in the complaint, may be deprived of his inalienable right of possessing his property, in violation of Ohio Constitution Section 1 of Article I; (c) Relator, as alleged in the complaint, may be deprived of his civil liberties, due to being deprived of his right to exercise control over his private property, in violation of Ohio Constitution Section 6 of Article I; and (d) Relator, pursuant Ohio Constitution Section 16 of Article I., has a clear legal right to be afforded a meaningful hearing at a meaningful and expedient time, in Relator's defense of his property and liberty; This Supreme Court of Ohio pursuant Ohio Constitution Section 16 of Article I., in pursuance of due process of law, must not have Relator suffer long detention of his rights without trial; and therefore, must without exception, as in accordance with Magna Carta Chapter 29 stating "We will sell to no man, we will not deny or defer to any man either justice or right" provide Relator full and speedy justice without detaining Relator's rights long; through means of, in accordance with O.R.C. §§2731.06, 2731.07, have an Alternative Writ of Mandamus entered on the journal; and make issuance of an Alternative Writ of

Mandamus ordering Respondent to wit: disburse the payment of compensation unto Relator valued in the indisputable amount certain of \$7 Million with mandated O.R.C. §§1343.03(A & B) and 5703.47, Prejudgment and Post-judgment interest of 3% from due date, 12/21/2021, until paid, therefrom the self-insuring employers' guaranty fund; via deposit into said Checking Account, provided in Complaint's attached Exhibit F; or either, show cause why the act should not be performed on or before the 5<sup>th</sup> day after receipt of this order: in pursuance of Relator taking his remedy by the course of the law, and have justice, and right for the injury done to him, freely without sale, fully without any deniall, and speedily without delay. See State ex rel. City of Mansfield v. Lowrey, 3 Ohio Misc. 174, 177, 178 (Court of Common Pleas 1964); see also State ex rel. Morenz v. Kerr, 2004 Ohio 6208, ¶ 9 (Ohio S. Ct. 2004); see also Magna Carta Chapter 29; see also COTUS Fifth, Thirteenth, and Fourteenth Amendments; see also 28 U.S.C. §1657; see also Murray's Lessee v. Hoboken Land & Improvement Co., 59 US 272, 276-281 (S. Ct. 1856); see also Armstrong v. Manzo, 380 US 545, 550-552 (S. Ct. 1965); see also Lynch v. Household Finance Corp., 405 US 538, 543-545, 552 (S. Ct. 1972); see also Klopfer v. North Carolina, 386 US 213, 223-225, n.14 (S. Ct. 1967); see also Holden v. Hardy, 169 US 366, 389-391 (S. Ct. 1898); see also Lockheed Aircraft Corp. v. United States, 460 US 190, 194 (S. Ct.1983); see also Duke Power Co. v. Carolina Environmental Study Group, Inc., 438 US 59, 93 (S. Ct. 1978); see also New York Central R. Co. v. White, 243 US 188, 201 (S. CT. 1917).

Respectfully submitted,

Dated: December 27, 2021

/s/ Cornelius J. Clemons

Cornelius J. Clemons

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**CERTIFICATE OF SERVICE**

I certify that on December 27, 2021, the foregoing *MOTION FOR ORC §§2731.06/ 2731.07 ENTRY OF ALTERNATIVE WRIT OF MANDAMUS UPON JOURNAL & ISSUANCE OF ALTERNATIVE WRIT OF MANDAMUS OF RELATOR* was filed electronically and sent by first class mail via the U. S. Postal Service to:

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