In the Supreme Court of Ohio

BRIAN CALDWELL, ET AL.,	:	Case No. 2023-0809
	:	
Appellants,	:	On Appeal from the
	:	Marion County
v.	:	Court of Appeals,
	:	Third Appellate District
WHIRLPOOL CORP.,	:	
	:	Court of Appeals
Appellee.	:	Case No. 9-22-61

REPLY BRIEF OF APPELLANT OHIO BUREAU OF WORKERS' COMPENSATION

CHELSEA F. RUBIN (0086853)
Philip J. Fulton Law Office
89 East Nationwide Blvd., Suite 300
Columbus, Ohio 43215
614-224-3838
614-224-3933 fax
chelsea@fultonlaw.com

Counsel for Appellant
Brian Caldwell

MARK S. BARNES (0064647)
ROBERT L. SOLT, IV (0087954)
Bugbee & Conkle, LLP
405 Madison Avenue, Suite 1300
Toledo, Ohio 43604
419-244-6788
419-244-7145 fax
mbarnes@bugbeelawyers.com
rsolt4@bugbeelawyers.com

Counsel for Appellee
Whirlpool Corporation

DAVE YOST (0056290)
Attorney General of Ohio

T. ELLIOT GAISER* (0096145)
Solicitor General
**Counsel of Record*
MICHAEL J. HENDERSHOT (0081842)
Chief Deputy Solicitor General
STEPHEN P. CARNEY (0063460)
MATHURA J. SRIDHARAN (0100811)
Deputy Solicitors General
NATALIE J. TACKETT (0040221)
Principal Assistant Attorney General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980
614-466-5087 fax
thomas.gaiser@ohioago.gov

Counsel for Appellant
Ohio Bureau of Workers' Compensation

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases

Statutes

REPLY

Brian Caldwell did everything right. He administratively filed his claim seeking workers'-compensation benefits for an additional condition within the five-year time allowed under R.C. 4123.52. And when he did not get that from the Commission, he timely appealed to the court of common pleas and perfected that appeal correctly. But he never got his day in court. That is because both lower courts mistakenly treated R.C. 4123.52's five-year time bar on *initiating administrative* claims for additional benefits as if it were a time limit on *resolving judicially* Caldwell's claim, which was already pending review in the court of common pleas.

This Court should reverse because that time bar applies only to initiating a claim for additional benefits, and it sets no time limit on resolving a claim in court under R.C. 4123.512. That provision anticipates resolving such claims *after* the period of limitations on initiating new claims and allows a court's judgment to replace the Commission's "as if" the Commission had made that determination in the first place. R.C. 4123.512(G).

Neither Whirlpool nor its *amicus*, the Chamber of Commerce, can escape that plain language. Neither grapples with the text of R.C. 4123.52, which addresses only the *Commission's* jurisdiction to review a claim but says nothing about interfering with the jurisdiction of the court under R.C. 4123.512. Both fail to give meaning to R.C. 4123.512(G)'s as-if clause. Their misunderstanding is compounded by reliance on cases that all concern the time to initiate a claim *administratively*—cases that say nothing about cutting off a

court's jurisdiction over a timely appealed and perfected claim. Worse, they pick out language in these cases about R.C. 4123.52 being a "statute of limitations" and insist that the statute thus functions as a springing time limit on the court's jurisdiction. That fundamentally misunderstands what a "statute of limitations" is: a time limit *for a party* to file a claim, not for a court to resolve it.

At bottom, Whirlpool incorrectly hinges Caldwell's day in court on the timeliness (and possible gamesmanship) of many third parties: the employer, the administrative process, and the courts. The General Assembly was not so unreasonable and unfair. Whirlpool asks this Court to look away from that and blames Caldwell for the unpredictable speed of various third-party actors. Its "just file earlier" advice leaves parties guessing how far in advance to file and does not account for the extra *years* that further court appeals can take, making the five-year time reduce to perhaps zero. This Court should decline to reach such an atextual and unfair result. It should instead give Caldwell the day in court to which he is entitled.

ARGUMENT

I. Caldwell's additional-condition claim did not "expire" because the five-year limitation under R.C. 4123.52 does not apply to an R.C. 4123.512 appeal.

A. The five-year limitation under R.C. 4123.52 does not apply to Caldwell's R.C. 4123.512 appeal.

1. Ohio's workers' compensation law compensates workers who sustain accidental injuries or contract diseases in the course of employment. R.C. 4123.01, *et seq*.

Recall that such a claim for workers' compensation is resolved in three stages. Bureau Br.4–5. First, either the employer (if the employer is self-insured), or the Bureau (if the employer participates in the Bureau's "State Fund"), reviews the claim. Second, if either the employer or worker disagrees with the outcome of such review, the claim can be reviewed by an administrative process under the independent Industrial Commission. R.C. 4123.511. Third, the claimant or the employer can appeal any order of the Commission regarding the claimant's right to participate in the system to the court of common pleas. R.C. 4123.512.

As the Bureau's opening brief showed, the first issue in this case concerns the time limits that apply to workers who already have been found entitled to compensation and have received some form of benefits. The General Assembly provided a process for such workers, who have received some benefits already, to also seek compensation for additional medical conditions that later arise from the same initial workplace injury. These "additional-condition claims"—that is, later requests for compensation in addition to benefits already received for a workplace injury—may be filed for up to five years from the time of the last relevant payment. R.C. 4123.52(A). During that five-year period, "*[t]he jurisdiction of the industrial commission* and the authority of the administrator of workers' compensation over [that] case *is continuing*, and the commission may make such modification or change with respect to former findings or orders with respect thereto, as, in its opinion is justified." *Id.* (2011) (amended 2020, 2023) (emphases added).

Recall that like an initial claim, a claim for compensation for an additional condition starts anew with the employer (if it is self-insured), or with the Bureau (if not). The Commission then resolves it administratively. At the Commission, additional-condition claims may receive up to three steps of review, and either a claimant or employer can appeal the Commission's final determination to the courts within sixty days of the Commission's last determination. R.C. 4123.512(A). Meeting that deadline is enough: "The filing of the notice of the appeal with the court" is "the *only* act required to perfect the appeal." *Id.* (emphasis added). A claimant then files a complaint, so these appeals are a hybrid between an administrative appeal and a typical cause of action. Again, however, filing the notice of appeal is the sole jurisdictional act.

The common-pleas court then resolves whether the claimant has a "right to participate" in the system for the additional condition, just as common-pleas courts decide whether a claimant's initial claim is valid. *Id.* After the worker's right to participate is determined by the Court, the case is returned to the Commission. Specifically, "*the commission* and the administrator" *must* "*thereafter proceed in the matter of the claim as if the judgment were the decision of the commission*, subject to the power of modification provided by section 4123.52 of the Revised Code." R.C. 4123.512(G) (2011) (amended 2014, 2015, 2017, 2023) (emphases added). The case then follows the normal course of appeals. Parties aggrieved by a common-pleas court decision may appeal to a court of appeals and, finally, to this Court. R.C. 4123.512(E).

One final statute is relevant to the courts' jurisdiction over a claim (and is the basis of Proposition Two here): the savings statute. It allows a plaintiff in the common-pleas court to refile a complaint within one year after voluntarily dismissing one. R.C. 2305.19(A). That withdrawal and refiling does not disturb the court's jurisdiction over the case, which is "perfected" by timely filing a notice of appeal. R.C. 4123.512(A).

2. Brian Caldwell was injured on his job with Whirlpool in March 2015. *Caldwell v. Whirlpool Corp.*, 2023-Ohio-1530 (3d Dist.) ("App.Op."), ¶2. His initial claim for workers' compensation was allowed. He received his last payment under this claim on January 11, 2017. *Id.*

Less than three years after that, on December 5, 2019, Caldwell timely sought an allowance for an additional condition. *Id.* at ¶3. That request was denied by both the district hearing officer and staff hearing officer, and finally, the full Commission declined further review on April 17, 2020. Compl. ¶9. The decision was mailed on April 21, 2020.

Caldwell timely appealed to the Marion County Court of Common Pleas on June 19, 2020. App.Op. ¶3. That June 2020 appeal was within five years of Caldwell's last payment for the first-allowed claim in January 2017. Caldwell voluntarily dismissed his appeal on April 30, 2021, and refiled less than a year later, on April 20, 2022. *Id.* at ¶¶3–4.

On May 27, 2022, Whirlpool moved for summary judgment, arguing that Caldwell's claim had "expired" on January 11, 2022, five years after the last payment in January 2017. *Id.* The issue presented in this case is whether R.C. 4123.52's five-year clock

runs independently of the case's status in court. In other words, can a timely initiated additional-condition claim expire while proceedings in court are underway if five years pass from the time of the last relevant payment?

3. As the Bureau's opening brief explained, the answer is "no." Bureau Br.10–21. The plain text of R.C. 4123.52 and R.C. 4123.512, and their interaction, along with fairness, all show that Caldwell's additional-condition claim—which was timely filed administratively—remains live even if a court did not resolve it within five years of last payment.

The text of both R.C. 4123.52 and R.C. 4123.512 confirm that Caldwell's additional-condition claim remained viable. As always, the "starting point" in interpreting a statute "is the statute's text." *Spencer v. Freight Handlers, Inc.*, 131 Ohio St. 3d 316, 2012-Ohio-880, ¶16. Begin with R.C. 4123.52, which explains that "*[t]he jurisdiction of the industrial commission* … over each case is continuing," that the *Commission* "may make such modification … as, in *its opinion* is justified," but that any "modification, change, finding, or award shall be made within five years from the date of the last payment of compensation." *Id.* (emphases added). The statute thus directs the *Commission* to act within five years after the last relevant payment. After that, its continuing jurisdiction expires.

While R.C. 4123.52 governs what the *Commission* can do, R.C. 4123.512 governs what a *court* can do. That provision says that an appeal must be filed within sixty days of the last relevant Commission decision. R.C. 4123.512(A). And that "[t]he filing of the notice of the appeal with the court is the *only* act required to perfect the appeal." *Id.*

(emphasis added); *Fisher v. Mayfield*, 30 Ohio St. 3d 8, paragraphs one and eleven of the syllabus (1987). That means jurisdiction is fully "perfect[ed]" after the notice of appeal is filed, without more. The courts' jurisdiction is not connected to any running hourglass sand. That does not mean that the General Assembly forgot to connect the courts' jurisdiction to a clock. In fact, several other provisions promote prompt resolution of workers'-compensation claims. *See* R.C. 4123.512, R.C. 4123.512(I). Also, this Court requires that courts around the State track statistics about the relative disposition of workers'-compensation appeals against other case categories. *See* Superintendence Rules 37, 39, and Statistical Form A. But none of those timing provisions, or any other provision, connects the courts' jurisdiction under R.C. 4123.512 to R.C. 4123.52's time-to-initiate clock.

The "as-if" provision in subsection R.C. 4123.512(G) shows the functional relationship between the Commission's five-year jurisdiction over additional-condition claims, and the courts' jurisdiction over appeals of such claims. If the court finds for the claimant, the Commission must treat the court's judgment on the claimant's right to participate "as if the judgment were the decision of the commission." R.C. 4123.512(G). That is, the "as if" provision tells the Commission to implement the Court's decision by recognizing the additional condition and awarding any benefits flowing from that recognition "as if" the Commission had granted, rather than denied, the worker's request in the first place. A natural reading of the "as-if" clause covers both substance and timing. It changes the substance from a denial to a grant, and it puts the worker back in the same place that he

had been at the Commission a year or more before—with a timely claim pending before the Commission. That gives the worker the right to pursue any benefits flowing from that additional condition. Thus, R.C. 4123.512(G) explains how a case, when completed in the courts, returns to the Commission to implement a decision granting benefits.

While the plain text of both R.C. 4123.52 and 4123.512 resolve this case against an "expiration while pending" theory, other provisions further confirm that reading. For one, Chapter 4123's provisions "shall be liberally construed in favor of employees." R.C. 4123.95. That liberal-construction mandate applies to the "language provided in R.C. 4123.52"—i.e., the statute at issue here, governing the Commission's jurisdiction. *State ex rel. General Refractories Co v. Industrial Comm.*, 44 Ohio St. 3d 82, 84 (1989). For another, the workers'-compensation statutes elsewhere presume that cases will reach court resolution and after final judgment, be returned to the Commission for determinations of payment and other benefits. *See, e.g.*, R.C. 4123.511(H); R.C. 4123.511(I)(1)–(2); R.C. 4123.52(B),(D).

The Bureau's reading of these statutes is correct also because it results in a fair and reasonable outcome. *First*, a five-year deadline from last payment to full resolution of an additional-condition claim—including all available steps of the administrative and court review—is unrealistic. The purpose of the court-appeals process is to allow courts to decide whether a claimant is entitled to participate in the workers'-compensation system, whether for an initial claim or for an additional condition. This takes time. A full cycle through this Court alone takes typically over a year. So working through three court tiers

could reasonably take three years (if not more, if there is a remand and another go around). That means that a claimant wanting to ensure court resolution would have to seek additional or modified benefits not within five years of the last payment, as the General Assembly directs, or even in three years, as Caldwell did here. Even filing in one year might not be enough, if a court might be slow, or a remand is involved. A claimant could file the day after last payment and still run out of time, through no fault of his own.

Second, a claimant cannot control the court's calendar any more than it can hurry along its opponent. That's why statutory deadlines—such as statutes of limitations and repose—direct a party to act in time to preserve *his own* rights, not to compel a third party to act. *See Wilson v. Durrani*, 164 Ohio St. 3d 419, 2020-Ohio-6827, ¶11 *reconsideration granted in part*, 161 Ohio St. 3d 1453, 2021-Ohio-534. Deadlines that hinge on a third party's action create perverse incentives toward gamesmanship. For example, reading R.C. 4123.52 as a deadline for claim resolution would embolden defendants to try to run out the clock, such as by scheduling delays. That result is unfair. That reading also might run up against constitutional due process concerns, triggering the duty to read statutes to preserve their constitutionality. *See State v. Jeffries*, 160 Ohio St. 3d 300, 2020-Ohio-1539, ¶27; *Buchman v. Wayne Trace Loc. Sch. Dist. Bd. of Edn.*, 73 Ohio St. 3d 260, 269 (1995).

At bottom, the interplay between R.C. 4123.52 and R.C. 4123.512 starts with the *Commission's* power to entertain a timely *initiated* claim for additional/modified benefits and shifts to the *court's* power to *resolve* timely appealed claims. The statutory five-year

deadline for initiation thus does not affect, and so does not kill, an otherwise timely filed and appealed additional-condition claim still pending review in a court.

4. All this resolves the question asked in Proposition One: whether Caldwell's timely filed and appealed additional-condition claim expired while pending before the court. It did not. No one disputes that Caldwell timely filed his additional-condition claim under R.C. 4123.52 because his December 2019 filing was *less than three years* after his last payment in January 2017. No one disputes that he filed his court appeal on time under R.C. 4123.512 because his June 2020 filing was within sixty days after the Commission's last order. Although not relevant, Caldwell's June 2020 appeal was also filed within five years of his last payment. All this perfected the common-pleas court's jurisdiction under R.C. 4123.512.

After the appeal was perfected, the court's jurisdiction cannot be cut off by the unrelated five-year time bar to *initiate* a claim for an additional condition. Thus, the courts have authority to decide Caldwell's additional-condition claim and any decision in his favor will replace the Commission's contrary judgment and reset the initiation clock going forward. *See* R.C. 4123.512(G).

B. Because the savings statute applies to R.C. 4123.512 appeals, and R.C. 4123.52 does not, Caldwell's claim is unaffected by the operation of the savings statute.

The interplay between R.C. 4123.52 and R.C. 4123.512 resolves the second question presented in this case: whether the savings statute, R.C. 2305.19, applies to R.C. 4123.512

appeals. It does. But that second question and answer depends wholly on the answer to the first question.

For one, this Court has already held that the savings statute applies to cases under R.C. 4123.512. *Lewis v. Connor*, 21 Ohio St. 3d 1, 4 (1985). That makes sense in the unique administrative-appeal and civil-action hybrid scheme under R.C. 4123.512. Recall that the court's jurisdiction from the administrative process is "perfected" by timely filing a notice of appeal under R.C. 4123.512. Caldwell did just that. From there, the case became a *de-novo* civil action. That means he had the option to dismiss and re-file within a year as any civil litigant would in that court. Here, Caldwell re-filed within the allowed year.

For another, nothing changes because of the earlier administrative period of limitations under R.C. 4123.52. Because that limit on time to initiate a claim does not govern the court's jurisdiction, once perfected, it does not matter whether the process in the common-pleas court takes years to conclude or if the process includes an allowed hiatus under the savings statute. All that matters is that the case, once perfected, is properly before the court and subject to the civil rules, which allow a savings-statute hiatus.

At bottom, this second issue neither added to, nor subtracted from, the viability of Caldwell's additional-condition claim. All that turns on whether a timely filed additional-condition claim can "expire" while pending court review. It cannot.

II. Whirlpool and its *amicus*, the Chamber of Commerce, offer no compelling reason to affirm.

Whirlpool and its *amicus,* the Chamber of Commerce, argue that a timely initiated

and appealed additional-condition claim can "expire" while pending judicial review. Their reasons do not merit affirmance.

Before explaining why, however, the Bureau pauses to note a point of agreement among Whirlpool, the lower court, and the Bureau: that the question presented in the second proposition, whether the savings clause revives Caldwell's additional-condition claim, is irrelevant to this case. Whirlpool Br.25. That is because the dispositive question in this case is whether a timely initiated and timely appealed additional-condition claim can expire while pending review before a court. For the reasons explained above, it cannot. *Above* 2–10. And Whirlpool concedes that if that answer is "no," Caldwell's withdrawing and re-filing the complaint under the savings statute does not change the disposition of this case. The Bureau agrees.

1. Whirlpool and the Chamber first argue that R.C. 4123.52 covers not only the time to initiate an additional-condition claim, but also the time by which it must be resolved. That interpretation does not find purchase in the statute's text. *See above* 6–10. Nor do the cases on which they rely—*Sechler v. Krouse*, 56 Ohio St. 2d 185 (1978), *State ex rel. Romans v. Elder Beerman Stores Corp.*, 100 Ohio St. 3d 165, 2003-Ohio-5363 (2003), and *Collinsworth v. Western Electric Co.*, 63 Ohio St. 3d 268 (1992)—support their view that R.C. 4123.52 covers *resolution*, and not just *initiation*, of an additional-condition claim.

Begin with *Sechler.* In that case, Sechler sought a modification of his prior claim for medical benefits following a work injury. *Sechler*, 56 Ohio St. 2d at 186. His request

for modification was denied because he filed it more than six years after the date of injury—the period of limitations under R.C. 4123.52 at the time. *Id.* This Court upheld that determination, concluding that claimants may not initiate a claim for additional or modified benefits outside of the time window permitted under R.C. 4123.52. *Id.* at 188.

Turn to *Romans*. *Romans* also asked whether the modification of a prior-allowed claim for benefits was timely initiated, and not timely resolved, under R.C. 4123.52. *Romans*, 100 Ohio St. 3d 165. That case concerned two versions of R.C. 4123.52: one that allowed claims for additional coverage within six years *of the date of injury* and a later amended version that allowed claims six years *after the last payment* on a prior-allowed claim. *Id.* at ¶9. Because the claim at issue was within six years after the last payment but more than six years after the date of injury, whether the modification request was timely initiated boiled down to which version of the statute applied. *Id.* at ¶¶9–10. Thus, this case, too, concerns timely *initiation*, not timely *resolution*.

Collinsworth also speaks to initiation rather than resolution. In *Collinsworth,* the claimant sought to modify her prior-allowed claim. *Collinsworth*, 63 Ohio St. 3d at 268–69. Her request was denied on the basis that it was filed outside the then-current ten-year time allowed for claim modification under R.C. 4123.52. The dispute there was what counts as the last relevant medical payment to start the initiation clock. *Id.* at 270. Again, though, the key issue was the timing of initiation, not resolution.

These cases all concern whether a claim to add to, or modify, a first-allowed claim

is timely initiated, not timely resolved, under R.C. 4123.52. Tellingly, not one of these cases references R.C. 4123.512, which governs the courts' jurisdiction to referee the filing of these claims within the time-to-initiate clock set by R.C. 4123.52. Thus the "finality" promised by R.C. 4123.52 is the finality from reopening "dormant claims" indefinitely, *Romans*, 100 Ohio St. 3d 165 at ¶8, not from their resolution. *Contra* Whirlpool Br.9–10; Chamber Br.8–10. Intermediate courts of appeals in this State, save one, have interpreted correctly R.C. 4123.52's bar as applying only to the time to initiate additional-condition claims administratively. *Cocherl v. Ohio Dep't of Transp.*, 2007-Ohio-3225, ¶31 (10th Dist.); *Williams v. Adm'r, Ohio Bureau of Workers' Comp.*, 2014-Ohio-1889, ¶23 (12th Dist.); *contra* Whirlpool Br.10.

Indeed, the Third District is an outlier in misconstruing R.C. 4123.52 as a "statute of limitations" on the time for *courts* to *resolve* a claim for additional coverage. The Third District's misunderstanding, in *Chatfield* and in the decision below, stems from a deeper misunderstanding of what a "statute of limitations" is. *See Chatfield v. Whirlpool Corp.*, 2021-Ohio-4365 (3d Dist.), ¶15; App.Op. ¶15. A statute of limitations, by definition, is the time established for a party to file something. Likewise, "tolling" means pausing a clock for a party to act, not pausing the time for the court to reach a decision. And, to the Bureau's knowledge, a statute of limitations has never described any scheme whereby one party must ensure that another party acts in time, let alone ensure a court decides before the timer runs out. Illustrating this point, this Court, in *Romans* and *Collinsworth*,

discusses R.C. 4123.52 as a statute of limitations on the claimant's time to file a claim. *Romans*, 100 Ohio St. 3d 165 at ¶¶9–10; *Collinsworth*, 63 Ohio St. 3d at 271–72. In other words, R.C. 4123.52 is not a time limit for resolving a claim—something outside of the claimant's control—but a time limit for initiating a claim for additional compensation—something within the claimant's control.

The Third District's errors do not end there. That court did not analyze the plain text of both R.C. 4123.52 and 4123.512 to discern whether either statute directed *a court* to halt a case already pending. And that court has failed to interpret R.C. 4123.512(G)'s relation-back language, that says a court's decision should replace the Commission's "as if" the Commission had ruled that way to start. Indeed, neither *Chatfield* nor the decision below even cite R.C. 4123.512(G).

Finally, Whirlpool misunderstands the Bureau to be arguing that R.C. 4123.512 appeals pause the R.C. 4123.52 clock. *See* Whirlpool Br.14–17. The Bureau argues no such thing. That second clock continues running unless reset by a decision favorable to the claimant. To illustrate, take Caldwell's situation. Because the last medical payment to Caldwell was more than five years ago, Caldwell's time to initiate a claim for an additional condition has closed. That clock never stopped running. The only way he can bring any other additional-condition claim is if the five-year clock *resets* (not stops). That clock resets only if he receives a favorable decision that replaces the Commission's original decision by operation of the as-if clause, and a payment is made to him again. *See*

R.C. 4123.512(G).

2. Whirlpool and the Chamber next argue that the "as-if" clause in R.C. 4123.512(G) does not "negate" R.C. 4123.52's time bar. Chamber Br.5–6; Whirlpool Br.5–8. But they do not provide an alternate reading of the as-if clause. Instead they ask this Court to "disregard[]" it completely. *State v. Nelson*, 162 Ohio St. 3d 338, 2020-Ohio-3690, ¶20 (quotation omitted). This Court should decline their invitation to do so.

Rather than explain the as-if clause, Whirlpool and its *amicus* argue R.C. 4123.52's time frame subjugates the court's power to grant relief because the court's authority to modify the Commission's judgment is "subject to the power of modification provided by section 4123.52 of the Revised Code," R.C. 4123.512(G). Whirlpool Br.12–13; Chamber Br.5–6. That argument turns R.C. 4123.512(G)'s text and purpose on its head. R.C. 4123.512(G)'s language *confers* rather than *limits* the court's power to modify an award. Read correctly as a power-conferring statute, the subject-to clause allows for *further* modification of the first-allowed claim after the Court resets the clock.

Three additional reasons confirm that this reading is correct. *First*, if the General Assembly meant to *limit* the Commission's power to award coverage after that time, it naturally would have used language like "subject to the time limits in," not the affirmative "power of modification." *Second*, it makes no sense to send a claimant back to the Commission, victory in hand, only to cut him off from cashing it in. *Third*, it does not make sense to have a court resolve a case in a claimant's favor if the Commission cannot

implement such a resolution. Yet, the entire subsection contemplates how to implement the court's judgment with the Commission. This all presupposes that the court finishes the case. If the General Assembly meant to cut off the case midway, it could have (and would have) just said *that* directly, without using this circumlocution to get there.

Whirlpool also argues, slightly differently, that a trial court can exercise jurisdiction over Caldwell's additional-condition claim—but then dismiss it as "expired." Whirlpool Br.5. This misreads the interplay between R.C. 4123.52 and R.C. 4123.512. Even if this argument had any merit, Whirlpool fails to apply the correct framework. A court that has appellate jurisdiction over an additional-condition claim but no ability to grant relief confronts a form of *mootness.* Thus, Whirlpool's jurisdiction-but-no-remedy argument implies that the General Assembly foreseeably established a class of eventually moot claims. That suggestion has no merit.

Finally, three cases that Whirlpool and the Chamber cite in support of their argument that jurisdiction under R.C. 4123.512 is "cut-off" by a still-running hourglass are all inapposite. Start with *State ex rel. Baker v. Indus. Comm.*, 97 Ohio St. 3d 267, 2002 -Ohio-6341, which the Chamber argues shows that claims can expire during protracted litigation. Chamber Br.9–10. *Baker* says no such thing. In *Baker,* the claimant sought compensation after he was injured on the job. 97 Ohio St. 3d 267, ¶1. After six years of litigation, the claim was allowed in 1999. *Id.* He then sought additional disability compensation in 2000, about seven years after the precipitating injury, but asked for backdated benefits

starting from the date of injury in 1993. *Id.* at ¶2. This Court disallowed benefits back-dated that far under a provision of R.C. 4123.52 that does not allow compensation for disability more than two years before the application date. *Id.* at ¶7. That means the earliest date from which Baker could receive benefits was 1998, two years before he had applied for additional benefits, and not 1993 as he had originally sought. *Id.* at ¶8. All this has no bearing here: that case involved a long dispute as to the initial claim itself, and only thereafter could payment on that claim be processed (as well as any backdated benefits owed to him). *Id.* at ¶9. Nothing in *Baker* speaks to whether a timely initiated and appealed additional-condition claim can time out while pending judicial review.

Next, *Snyder v. State Liability Board of Awards*, 94 Ohio St. 342 (1916), says that the Commission's jurisdictional bar cannot cut off a court's jurisdiction over a claim pending review before it. *See* Whirlpool Br.7. Under Ohio Gen. Code §1465-86 (R.C. 4123.52's predecessor), the Commission had "continuing" jurisdiction over "each case" to make "modification[s] or change[s] with respect to former findings or orders." *Snyder*, 94 Ohio St. at 349. And under Ohio Gen. Code §1465-90 (the then-operative version of R.C. 4123.512), courts had jurisdiction over appeals from any "final action" of the commission that "denies the right of the claimant to participate." *Id.* at 348–49. Likewise, *Perkins v. Industrial Com. of Ohio*, 106 Ohio St. 233 (1922) involved an amended version of the statute that conferred jurisdiction on the courts over "final action[s]" of the Commission that "den[y] the right of the claimant either to participate or *to continue to participate"* in the

fund. *Perkins*, 106 Ohio St. at 240 (citing Ohio Gen. Code §1465-90 (1917)).

Because of the interplay between those older versions of the statutes, the same question was asked in *Perkins* as in *Snyder*: whether the appealed order was a "final action" of the Commission that divested the commission of its jurisdiction over the claim and vested jurisdiction in the court of common pleas. *Snyder*, 94 Ohio St. at 348–49; *Perkins*, 106 Ohio St. at 237–38. That inquiry has no relevance here. No one disputes that the Commission's order denying Caldwell's additional-condition claim was final and appealable and that the court had jurisdiction to review it on day one. The issue here is whether the clock on the Commission's jurisdiction later modified the *court's* jurisdiction to review a properly appealed additional-condition claim. Neither *Snyder* nor *Perkins* answered that question. Neither even asked it, because the then-code did not set hard time limits on the Commission's continuing jurisdiction that raise the issue here.

3. Whirlpool and the Chamber also downplay the serious fairness implications stemming from their erroneous reading of the statutes. Chamber Br.7–8. Their arguments do little to ameliorate those concerns.

The Court has already considered the unfairness of hinging a person's day in court on the timeliness of third-party action. *See 2200 Carnegie, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 135 Ohio St. 3d 284, 2012-Ohio-5691. In *2200 Carnegie,* the parties contesting property valuations before a board of revision had to file a complaint by a deadline. The county auditor, a third party, had to notify other parties within thirty days after that

complaint was filed. The Court held that the first "requirement that an administrative proceeding be timely instituted," "is an act within the control of the instigating party" and is thus jurisdictional. *Id.* at ¶27. This Court declined to extend the jurisdictional bar to the second requirement. "[T]he timeliness of the auditor's action," the Court explained, "lies outside the control of either the owner or the school board." *Id.* "[C]onferring jurisdictional significance" on a third-party's failure to act, this Court concluded, "would violate basic fairness, given that an administrative official is the one required to act." *Id.* So, too, here. It is unfair to hold Caldwell responsible for others' delays.

It is absurd to ask a claimant to guess the length of administrative and court proceedings to file early enough that his additional-condition claim gets to trial before "expiration." *Contra* Whirlpool Br.26; Chamber Br.8–10. That is especially unworkable in the court context because of possible remand and further appellate review. And allowing timely filed and timely appealed additional-condition claims to expire after years of proceedings would waste the resources of the judiciary, the Commission, and the parties and discourage claimants from pursuing these claims. Because workers'-compensation laws should be "liberally construed in favor of employees," R.C. 4123.95, the Court should decline to read them to discourage claimants from even seeking benefits.

CONCLUSION

The Court should reverse the Third District's judgment and reinstate Caldwell's additional-condition claim for resolution on the merits in the common-pleas court.

Respectfully submitted,

DAVE YOST
Attorney General of Ohio

/s/ T. Elliot Gaiser
T. ELLIOT GAISER* (0096145)
Solicitor General
**Counsel of Record*
MICHAEL J. HENDERSHOT (0081842)
Chief Deputy Solicitor General
STEPHEN P. CARNEY (0063460)
MATHURA J. SRIDHARAN (0100811)
Deputy Solicitors General
NATALIE J. TACKETT (0040221)
Principal Assistant Attorney General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980
614-466-5087 fax
thomas.gaiser@ohioago.gov

Counsel for Appellant
Ohio Bureau of Workers' Compensation

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Brief of Appellant Ohio Bureau of Workers' Compensation was served this 26th day of December, 2023, by e-mail on the following:

Chelsea F. Rubin
Philip J. Fulton Law Office
89 East Nationwide Blvd., Suite 300
Columbus, Ohio 43215
chelsea@fultonlaw.com

Mark S. Barnes
Robert L. Solt, IV
Bugbee & Conkle, LLP
405 Madison Avenue, Suite 1300
Toledo, Ohio 43604
mbarnes@bugbeelawyers.com
rsolt4@bugbeelawyers.com

/s/ T. Elliot Gaiser
T. Elliot Gaiser
Solicitor General