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THE FAIRNESS REQUIREMENT FOR A WORKERS' COMPENSATION AGREEMENT—THE EFFECT OF Vernon v. Steven L. Mabe Builders

I. INTRODUCTION

North Carolina's Workers' Compensation Act¹ (“Act”) was enacted to provide immediate certain recovery to victims of industrial accidents, while limiting the employer's liability for such accidents.² The philosophy supporting the Act is the wear and tear of human beings should be charged to industry, just as the wear and tear of machinery is charged.³ “The primary purpose of legislation of this kind[,] therefore[,] is to compel industr[ies] to take care of . . . [their] own wreckage.”⁴

Subject to the approval of the Industrial Commission, the Act allows employers and employees to come to a voluntary agreement as to the compensation due the employee.⁵ The Act requires the Commission to review all such agreements for compliance with the statute;⁶ an underlying principle of these reviews is the statute represents the General Assembly's determination of what is fair compensation for a claimant.⁷

In the recent case of Vernon v. Steven L. Mabe Builders,⁸ the North Carolina Supreme Court decided that before the Industrial Commission may give its approval to an agreement, the Commission must make a full investigation and determination of the fairness of the compensation agreement to the employee and whether

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¹. N.C. GEN. STAT. § 97-1 to § 97-143 (1993).
⁶. Id. Once the Commission approves such an agreement, it becomes binding upon the parties and neither party can later deny the truth of the matters set forth in the agreement.
the agreement is in accord with the intent and purpose of the Act.\textsuperscript{9} Prior to the \textit{Vernon} decision, however, the Commission merely reviewed compensation agreements for completeness and compliance with the Act.\textsuperscript{10}

This Note provides a history of North Carolina courts' treatment of voluntary settlement agreements prior to \textit{Vernon v. Steven L. Mabe Builders}. Next, this Note examines the ruling in \textit{Vernon}, as well as the court's reasoning. The Note then reviews the relevant provisions of the Workers' Compensation Reform Act of 1994 passed by the General Assembly in July, 1994. Finally, the Note addresses the ramifications of the \textit{Vernon} decision and concludes with a discussion of the decision's effects and the questions it raises.

II. The Case

On October 16, 1986, the plaintiff, Homer R. Vernon, injured his back while lifting a heavy, solid-core door in the course of employment as a carpenter's helper with Steven L. Mabe Builders.\textsuperscript{11} The defendants admitted liability and, pursuant to an "Agreement for Compensation for Disability" (also known as Industrial Commission Form 21), began paying Mr. Vernon compensation for his injury.\textsuperscript{12} The Form 21 agreement was approved by the Industrial Commission on January 19, 1987.\textsuperscript{13}

Mr. Vernon reached maximum medical improvement on August 13, 1987, and was given a fifteen percent permanent partial disability rating by Dr. David L. Kelly.\textsuperscript{14} Dr. Kelly's report also stated he did not think that Mr. Vernon would be able to return to work.\textsuperscript{15}

On August 24, 1987, the plaintiff signed a "Supplemental Memorandum of Agreement As To Payment of Compensation,"

\begin{flushleft}
\textsuperscript{9} \textit{Id.} at 432, 444 S.E.2d at 191.
\textsuperscript{11} \textit{Id.} at 427, 444 S.E. 2d at 193.
\textsuperscript{12} \textit{Id.} This agreement paid Mr. Vernon for his temporary total disability during the healing period of his back pursuant to N.C. GEN. STAT. § 97-29 (1991).
\textsuperscript{13} \textit{Id.}
\textsuperscript{14} \textit{Vernon v. Steven L. Mabe Builders, 110 N.C. App.} 552, 553, 430 S.E.2d 676, 677 (1993).
\textsuperscript{15} \textit{Id.}
\end{flushleft}
otherwise known as Industrial Commission Form 26. Mr. Vernon, who is illiterate, was not represented at the time that he signed the Form 26. The executed agreement was sent to the Industrial Commission with Dr. Kelly’s office note.


On September 7, 1989, Mr. Vernon sought to have the Form 26 Agreement set aside so he could pursue a claim for total and permanent disability. In his request for a hearing, Mr. Vernon stated he had suffered a substantial change in his condition and

16. Id. This agreement provided for compensation for Mr. Vernon’s fifteen percent permanent partial disability in accordance with N.C. GEN. STAT. § 97-31(23) (1992).

17. Mr. Vernon’s wife read the agreement to him before he signed it. Although Mr. Vernon did not understand what the rating was about, he made no effort to learn anything more. He did not call an attorney, the insurance adjuster, or the Industrial Commission before he signed the agreement. Vernon, 110 N.C. App. at 554, 430 S.E.2d at 678.

18. Vernon, 336 N.C. at 428, 444 S.E.2d at 194.

19. Id. at 434, 444 S.E.2d at 200. The Rules of the Industrial Commission only require that such agreements for compensation be submitted on the proper Industrial Commission forms, along with all the relevant medical reports. See Workers’ Compensation Rules of the North Carolina Indus. Comm’n, Rule 501(4) (West 1995).


21. Id.

22. Vernon v. Stephen L. Mabe Builders, Opinion and Award by Morgan S. Chapman at 4, I.C. No. 701410, (Sept. 21, 1990). After all of the compensation under the agreement had been paid, Mr. Vernon went to the social security office to seek benefits, where someone recommended he see an attorney regarding his worker’s compensation benefits. Upon advice of counsel, he moved to have the Form 26 set aside. Id.

23. Section 97-47 allows the Commission to review any award on the grounds of a change in condition. N.C. GEN. STAT. § 97-47 (1991). After such a review, the Commission may make an award which increases, decreases, or ends the compensation previously awarded. Id. Commissioner Chapman’s Opinion and Award did not address the change of condition issue, apparently because it was not addressed at the hearing. Plaintiff-Appellant’s Brief to the Court of Appeals at 2, Vernon v. Steven L. Mabe Builders, 110 N.C. App. 552, 430 S.E.2d 676 (1993) (No. 9210IC551).
he had signed the Form 26 agreement "under duress, undue influence, fraud, misrepresentation or mutual mistake." 24

Deputy Commissioner Chapman found there had been no fraud, duress, undue influence, misrepresentation or mutual mistake in the making of the agreement. 25 The Deputy Commissioner also found as a fact that Mr. Vernon did not understand what the defendant's employees had told him with regards to his disability. 26 The Deputy Commissioner concluded Mr. Vernon could not claim he had relied on what the defendant's employees had told him when he signed the agreement, if he did not understand what they were telling him. 27 Thus there could have been no misrepresentation. 28

In addition, the Deputy Commissioner found as a fact that Mr. Vernon had been free to make an election of remedies. 29 The Commission would approve the resulting settlement (and the election of either remedy) as long as there was supporting documentation and the agreement complied with the Industrial Commission Rules and the Act. 30

The Deputy Commissioner concluded as a matter of law that Mr. Vernon was not entitled to have the Form 26 agreement set aside, particularly since there had been no showing of error due to


25. Id. Section 97-17 sets forth the conditions under which the Commission may set aside settlement agreements. The statute provides in pertinent part:

[No party to any agreement for compensation approved by the Industrial Commission shall [thereafter] be heard to deny the truth of the matters therein set forth, unless it shall be made to appear to the satisfaction of the Commission that there has been error due to fraud, misrepresentation, undue influence, or mutual mistake, in which event the Industrial Commission may set aside such agreement.

N.C. GEN. STAT. § 97-17 (1991). The issue of whether Mr. Vernon had sustained a change in condition was not heard at the hearing. Vernon v. Steven L. Mabe Builders, Opinion and Award by Morgan S. Chapman at 6, I.C. No. 701410 (Sept. 21, 1990).

26. The plaintiff claimed that the rehabilitation nurse hired by the defendant led Mr. Vernon to believe he was being awarded the highest possible amount for his injury. Plaintiff-Appellant's Brief at 5-6, Vernon (No. 9210IC551).


28. Id.

29. Id. at 5.

30. Id. at 5-6.
fraud, misrepresentation, or undue influence. The Deputy Commissioner, therefore, found the Industrial Commission had not erred in approving the Form 26 agreement. The Full Commission approved and adopted the decision of Deputy Commissioner Chapman. Mr. Vernon appealed to the court of appeals.

The North Carolina Court of Appeals affirmed the decision of the Industrial Commission on two grounds: first, there was competent evidence in the record to support the Commission's finding the agreement was not entered into by reason of misrepresentation and mutual mistake; and second, there is no requirement that the Industrial Commission determine a compensation agreement is fair.

Judge Wynn dissented, asserting the Commission does have a duty to determine that compensation agreements are fair. Since the Commission had not made a finding that the compensation agreement was fair, Judge Wynn argued the case should be remanded for such a determination. Mr. Vernon filed a notice of appeal under N.C. Gen. Stat. § 7A-30, and the North Carolina Supreme Court granted discretionary review on an additional issue.

On appeal, the North Carolina Supreme Court agreed with Judge Wynn and reversed the court of appeals, remanding to the Industrial Commission for a determination as to whether the

31. Id. at 6. See also supra note 25.
33. Vernon, 110 N.C.App. at 555, 430 S.E.2d at 678.
34. Either party to the dispute may appeal to the court of appeals within thirty days of the date of the decision of the Industrial Commission. See N.C. Gen. Stat. § 97-86 (Supp. 1994).
35. Vernon, 110 N.C. App. at 558-59, 430 S.E.2d at 680.
36. Id. at 559, 430 S.E.2d at 681.
37. Id. at 560, 430 S.E.2d at 681.
38. Section 7A-30 allows an appeal of right to the North Carolina Supreme Court where there has been a dissenting opinion in the court of appeals. See N.C. GEN. STAT. § 7A-30 (1989).
39. Vernon, 336 N.C. at 435, 444 S.E.2d at 196. The additional issue was "[Whether] the Form 26 Agreement [should] be set aside on the basis of mutual mistake, misrepresentation, or excusable neglect, when at the time the Agreement was executed both parties, and the Industrial Commission, mistakenly thought that the agreement provided plaintiff all the benefits to which he was entitled?" Notice of Appeal and Petition for Discretionary Review, Filed July 12, 1993. The supreme court later determined that the petition for discretionary review of this issue was improvidently allowed. Vernon, 336 N.C. at 435, 444 S.E.2d at 196.
Form 26 Agreement was "fair and just and in accord with the intent and purpose of the Act, considering plaintiff's entitlement under N.C. Gen. Stat. § 97-29."\(^{40}\) The court, however, did not address the issue of whether the agreement could be put aside under N.C. Gen. Stat. § 97-17.\(^{41}\)

The supreme court held the Commission has a duty to determine that voluntary compensation agreements are fair, and the Commission had not made such a determination in this case.\(^{42}\) The Commission may rescind its approval and put aside the agreement if it finds the agreement was not fair in light of Mr. Vernon's potential benefits under section 97-29.\(^{43}\)

In dissent, Justice Meyer disagreed with the majority's contention that there is a duty for the Industrial Commission to go beyond finding the terms of the compensation agreement conform to the provisions of the Workers' Compensation Act.\(^{44}\) In Justice Meyer's view, the procedures followed by the Commission in this case were sufficient to meet its obligation under the statute.\(^{45}\) The fact that Mr. Vernon may have been eligible for a more favorable decision does not make the settlement he chose \textit{per se} unfair.\(^{46}\) If an agreement complies with the statute, then it is fair by legislative determination.\(^{47}\)

III. BACKGROUND

A. \textit{Structure and Duties of the North Carolina Industrial Commission}

The North Carolina Workers' Compensation Act was enacted for two social policy reasons. First, the Act provides employees with quick and certain recovery for injuries which arise out of the course of their employment.\(^{48}\) Second, the Act allows limited liability for employers.\(^{49}\) Although the Act is to be liberally con-

\(^{40}\) Id. at 434, 444 S.E.2d at 196.
\(^{41}\) Id. See also supra notes 25 and 39.
\(^{42}\) Id.
\(^{43}\) Id.
\(^{44}\) Id. at 437, 444 S.E.2d at 203 (Meyer, J., dissenting).
\(^{45}\) Id.
\(^{46}\) Id.
\(^{47}\) Id. at 438, 444 S.E.2d at 204.
\(^{49}\) Hendrix, 317 N.C. at 190, 345 S.E.2d at 381.
strained in favor of recovery for employees, the courts cannot judicially expand an employer's liability beyond the statutory parameters.56

The Industrial Commission is the administrative agency charged with administering the Workers' Compensation Act.51 The Industrial Commission is responsible for assuring fair dealing and compliance with the Act in any voluntary settlement agreement between the parties.52 The Commission acts in a judicial capacity in those situations where the parties cannot come to a voluntary agreement.53

When an employer and an employee agree on a compensation amount the Commission must approve the agreement before such an agreement can be enforced.54 This approval requirement is intended to protect employees against the disadvantages arising from their economic status and to assure that voluntary compensation agreements are in accord with the Act's intent and purpose.55 In approving compensation agreements, the Commission acts in a judicial capacity.56 The agreement, when approved, becomes an award enforceable by a court decree.57

In contrast, under the Industrial Commission Rules,58 compromise settlements and releases59 are approved only after a full investigation and determination that the settlement is fair.60 Voluntary compensation agreements are reviewed only to determine

50. Id.
52. Id. See also N.C. GEN STAT. § 97-82 (Supp. 1994).
53. Biddix, 237 N.C. at 663, 75 S.E.2d at 780.
55. Biddix, 237 N.C. at 663, 75 S.E.2d at 780.
56. Vernon, 336 N.C. at 434, 444 S.E.2d at 200.
59. These agreements are also known as "clinchers" which remove the claim completely from the Industrial Commission's jurisdiction. Vernon, 336 N.C. at 430, 444 S.E.2d at 196.
60. See Workers' Compensation Rules of the North Carolina Indus. Comm'n, Rule 502 (West 1995). Compromise agreements are reviewed under Industrial Commission Rule 502, while compensation agreements are reviewed under Industrial Commission Rule 501. A similar distinction between settlement agreements and compensation agreements is made in the statute, in that section 97-17 covers both compromise settlements and compensation agreements while section 97-82 covers only compensation agreements.
the required documentation is present and the agreement complies with the provisions of the Act.  
As in any judicial proceeding, the facts upon which the Commission makes its decisions must be found in the admissions made by the parties, stipulations entered, and other evidence offered by the parties.  
"Recourse may not be had to records, files, evidence or data not thus presented to the court for consideration." In other words, when making a judicial determination as to whether a compensation agreement is fair, the Commission may only review the evidence which is submitted to it. Vernon makes clear that the Commission must engage in a substantive review and must analyze those records to determine whether the employee may recover under more than one provision of the Act.

When the Workmen's Compensation statute was enacted in 1929, the Industrial Commission did not have the power to set aside agreements. In response to a decision of the North Carolina Workmen's Compensation Act, ch. 120, 1929 N.C. SESS. LAWS 117 (current version at N.C. GEN. STAT. § 97-1 to § 97-143 (1991 & Supp. 1994)).

62. Biddix, 237 N.C. at 663, 75 S.E.2d at 780.
63. Id.
64. Under Industrial Commission Rules, the only items which must be submitted are the Industrial Commission forms and complete medical reports. See Workers' Compensation Rules of the North Carolina Indus. Comm'n, Rule 501 (West 1995).
65. This substantive review will be important especially when the claimant is unrepresented and has the option of recovering under more than one statute. Under Vernon the Commission must determine whether the agreement was the best option for the employee. In addition, the Commission may have to require the claimant to retain counsel, as Justice Meyer suggested in his dissent. See Vernon, 336 N.C. at 438, 444 S.E.2d at 203. In the instant case, Dr. Kelly's note which mentioned the possibility of permanent total disability was included in the records sent to the Commission, which could arguably have given the Commission reason not to approve the agreement.
66. The statute which was the predecessor to section 97-17 was ch.120 section 18, which stated:

Nothing herein contained shall be construed so as to prevent settlements made by and between the employee and employer so long as the amount of compensation and the time and manner of payment are in accordance with the provisions of this act. A copy of such settlement agreement shall be filed by employer with and approved by the Industrial Commission.

North Carolina Workmen's Compensation Act, ch. 120 § 18, 1929 N.C. SESS. LAWS 117, 124 (current version at N.C. GEN. STAT. § 97-17 (1991)).
The Virginia Supreme Court\(^6\) amended the Act in 1963, specifically giving the Commission such authority.\(^6\) The Industrial Commission presently possesses the power, upon application in due time, to relieve a party from a judicial determination of his rights when the decision is the product of mistake, fraud, misrepresentation, undue influence or mutual mistake.\(^7\) The Commission is not a court of general jurisdiction, and its power to set aside an agreement is no greater than the power granted to it by statute.\(^7\) With its decision in *Vernon*, the North Carolina Supreme Court has expanded the judicial powers of the Commission beyond those granted by statute.\(^7\) The Commission may now set aside an agreement for those reasons listed in section 97-17 and may also set aside agreements which do not provide the plaintiff with his maximum potential recovery.

**B. The Development of "Scheduled" Injuries**

1. Wage Loss verses Schedule Injury Theories

Workers' compensation laws were first enacted in Prussia in the 1880's.\(^7\) Between 1887 and 1907, compensation statutes were enacted in twenty additional countries.\(^7\) These statutes were all pure wage-loss statutes, and did not contain any provision for any type of schedule for permanent partial disability.\(^7\) A schedule is a statutory provision which contains descriptions of various body

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\(^6\) See Caudill v. Chatham Mfg. Co., 258 N.C. 99, 128 S.E.2d 128 (1962). In Caudill, the supreme court opined:

> [W]e make no decision with respect to, the question as to whether... the Industrial Commission has inherent equitable jurisdiction to rescind and set aside settlements and compromise settlements, approved by them on the ground of mutual mistake of fact.... The General Assembly may desire to give the matter consideration. *If the Industrial Commission presently has no such jurisdiction by implication, it cannot confer such jurisdiction upon itself in the exercise of its rule making authority.*

Id. at 106-07, 128 S.E.2d at 133 (emphasis added).

\(^7\) See N.C. GEN. STAT. \(\S\) 97-17 (1991).


\(^7\) These powers are essentially equitable powers, which allow the Commission to set aside agreements on equitable grounds of unfairness.

\(^7\) C. Larson, Law of Workmen's Compensation \(\S\) 57.14(b) (1992).

\(^7\) Id.

\(^7\) Id. A pure wage-loss statute merely compares the pre-injury earnings of the employee with the post-injury earnings and compensates the employee for...
parts and provides specific compensation rates for loss of those body parts.

The first workers' compensation acts passed in the United States were mostly pure wage-loss statutes. The first schedules which appeared were those contained in individual insurance policies, which began to appear in the second half of the nineteenth century. Schedules, limited to obvious and easily provable losses, were never intended to depart from the wage-loss concept. Schedules were enacted with the goal of preventing litigation and providing certainty of recovery for those who had sustained a scheduled loss. A presumption existed, which was more valid in the early 1900's than today, that there would be a reduction in earning capacity if a worker lost one of the scheduled members.

Schedules began to proliferate and expand in the early 1900's. This expansion covered more types of recovery, departing from compensation only for larger bodily members to smaller members. Loss of use became compensable, as well as actual loss of a limb and partial loss of use of a limb. The more the schedules expanded, the less they reflected the true wage-loss principle which the compensation acts were based upon.

2. Workmen's Compensation Laws in North Carolina

The North Carolina Workers' Compensation statute was first enacted in 1929 and included a limited schedule of injuries. The statute as originally enacted did not contain provisions for recovery for loss of use of the back, or loss of "any important external or internal organ" that are currently in the Act. See generally N.C. GEN. STAT. § 97-31 (1991).
certain compensation to an injured employee and to allow limited and determinate liability for employers.\textsuperscript{85} The North Carolina Supreme Court historically interpreted the Act liberally in favor of benefits for employees.\textsuperscript{86} As first enacted, the North Carolina workers' compensation law allowed for four types of compensation to be paid to employees.\textsuperscript{87} The North Carolina Supreme Court interpreted these compensation allowances to be non-exclusive,\textsuperscript{88} and allowed awards for scheduled injuries even where the employee had not suffered any loss of wages or earning capacity.\textsuperscript{89} Thus, an employee who had suffered no actual economic injury in the form of lost wages could receive payment for a scheduled injury.

The North Carolina General Assembly reacted to this judicial interpretation by modifying the law in 1943 to prohibit double compensation by adding the "in lieu of" language found in section 97-31.\textsuperscript{90} Although the modified statute provided recovery for scheduled injuries was to be "in lieu of all other compensation,"\textsuperscript{91} the North Carolina Supreme Court determined that such language did not prohibit recovery for the loss of an organ and the disfigurement which resulted from its removal.\textsuperscript{92} The court rea-

\begin{itemize}
  \item \textsuperscript{85} See Barnhardt v. Yellow Cab Co., 266 N.C. 419, 427, 146 S.E.2d 479, 484 (1966).
  \item \textsuperscript{87} The types of compensation allowed were: (1) Compensation for disability (Disability, for purposes of the Act, is defined as incapacity to earn the wages which the employee was receiving at the time of the accident.); (2) Compensation in stipulated amounts for loss of some body part (Scheduled injuries); (3) Compensation for death; (4) Compensation for disfigurement. North Carolina Workmen's Compensation Act, ch. 120 § 31, 1929 N.C. Sess. Laws 117, 130 (current version at N.C. Gen. Stat. § 97-131 (1991)).
  \item \textsuperscript{88} See Branham v. Denny Roll & Panel Co., 223 N.C. 233, 25 S.E.2d 865 (1943).
  \item \textsuperscript{89} See Stanley v. Hyman-Michaels Co., 222 N.C. 257, 22 S.E.2d 570 (1942).
  \item \textsuperscript{90} Section 97-31 reads in pertinent part: "In cases included by the following schedule the compensation in each case shall be paid for disability during the healing period and in addition the disability shall be deemed to continue for the period specified, and shall be in lieu of all other compensation, including disfigurement." N.C. Gen. Stat. § 97-31 (1991) (emphasis added).
  \item \textsuperscript{91} Id.
  \item \textsuperscript{92} See Cates v. Hunt Constr., 267 N.C. 560, 148 S.E.2d 604 (1966). In Cates, the worker had sustained an injury which resulted in his loss of a kidney. The
soned the “in lieu of” provisions apply only when all of the employee’s injuries are set out in the schedule.93

The next question that arose concerning the scheduled injury provisions was whether an employee could recover for permanent total or partial disability when all of the injuries which cause the disability are scheduled injuries.94 When the North Carolina Supreme Court first addressed this question in 1942, it determined that recovery under section 97-31 was exclusive in the case of total disability, which meant no recovery under the scheduled injury statute.95 If an employee is only partially disabled as a result of a scheduled injury, however, the employee can recover for both the partial disability and the scheduled injury.96

The court later determined an employee may recover for either total disability or for the scheduled injury, overruling its previous determination that recovery under the scheduled injury provision was exclusive.97 The employee is free to elect compensation under whichever provision is more favorable.98

C. Judicial Interpretation of N.C. Gen. Stat. § 97-17 and § 97-82

North Carolina General Statute § 97-17 gives the Industrial Commission the power to set aside agreements that it finds to be

Industrial Commission awarded compensation for disfigurement due to the scar that was left when the kidney was removed, but not for loss of the kidney because it was not a scheduled loss. The disfigurement caused by the scar, however, was included on the schedule of injuries. The supreme court reversed, holding the loss of the kidney was compensable notwithstanding the “in lieu of” language of the statute. See also supra note 65.

94. Disability is defined as “incapacity because of injury to earn the wages which the employee was receiving at the time of the injury in the same or other employment.” N.C. GEN. STAT. § 97-2(9) (Supp. 1994).
96. Id.
erroneous "due to fraud, misrepresentation, undue influence or mutual mistake." North Carolina General Statute § 97-82 allows the parties to reach an agreement with regards to compensation, as long as the employer files the agreement with the Industrial Commission and the Commission approves the agreement.

If an agreement is reached, but is not filed with and approved by the Commission, it is voidable at the option of the employee or his dependents. Once an agreement is approved it is enforceable by a court decree.

D. Case Law Concerning the Judicial Power of the Industrial Commission

The North Carolina Supreme Court first addressed the question of the limits of the Industrial Commission's judicial capacity

101. The statute reads as follows:

Memorandum of agreement between employer and employee to be submitted to Commission on prescribed forms for approval; direct payment as award

(a) If the employer and the injured employee or his dependents reach an agreement in regard to compensation under this Article, they may enter into a memorandum of the agreement in the form prescribed by the Commission.

An agreement, however, shall be incorporated into a memorandum of agreement in regard to compensation: (i) for loss or permanent injury, disfigurement, or permanent and total disability under G.S. 97-31, (ii) for death from a compensable injury or occupational disease under G.S. 97-38, or (iii) when compensation under this Article is paid or payable to an employee who is incompetent or under 18 years of age.

The memorandum of agreement, accompanied by a full and complete medical report, shall be filed with and approved by the Commission; otherwise such agreement shall be voidable by the employee or his dependents.

(b) If approved by the Commission, a memorandum of agreement shall for all purposes be enforceable by the court's decree as hereinafter specified. Payment pursuant to G.S. 97-18(b), or payment pursuant to G.S. 97-18(d) when compensability and liability are not contested prior to expiration of the period for payment without prejudice, shall constitute an award of the Commission on the question of compensability of and the insurer's liability for the injury for which payment was made. Compensation paid in these circumstances shall constitute payment of compensation pursuant to an award under this Article.

102. Id.
103. Id.
in the case of *Biddix v. Rex Mills*. Biddix involved an employee who filed a claim and request for hearing more than a year after the accident in which his injury occurred. The Deputy Commissioner denied the claim, determining that it was barred by section 97-24. The Full Commission reversed, finding the employer had "lulled" the employee into a false sense of security, and therefore was estopped from pleading section 97-24. The North Carolina Supreme Court reversed the Full Commission and reinstated the decision of the Deputy Commissioner.

The supreme court in *Biddix* found the Full Commission had erred in waiving the statute of limitations imposed by section 97-24. When an employer does what he is required to do, which in this case was to provide medical care to the injured employee, the employer does not waive the protective provisions of the statute enacted in his behalf. Since the employee had not filed his claim within twelve months of the accident, as required by section 97-24, he was barred from recovery. The court held the Commission may not waive statutory provisions on equitable grounds.

In *Pruitt v. Knight Publishing Co.*, the supreme court refused to release the parties from an approved Form 26. When the plaintiff signed the agreement he was unrepresented by coun-

104. 237 N.C. 660, 75 S.E.2d 777 (1953). Section 97-24 provides that the right to compensation is barred unless a claim is filed with the Industrial Commission within two years of the accident. N.C. GEN. STAT. § 97-24 (Supp. 1994). At the time *Biddix* was decided, the statute of repose was one year.

105. *Biddix*, 237 N.C. at 662, 75 S.E.2d at 779.

106. Id.

107. Id.

108. Id. at 666, 75 S.E.2d at 782. This case was decided before the court of appeals was created in 1968.

109. Id. at 664, 75 S.E.2d at 780.

110. *Id.*; see also N.C. GEN. STAT. § 97-25 (1991).

111. N.C. GEN. STAT. § 97-24 was amended in 1955 to extend the time limit for filing from one year to two years. *See generally* McCrater v. Stone & Webster Eng'g Corp., 248 N.C. 707, 104 S.E.2d 858 (1958) (holding the plaintiff's substantive right of recovery could not be enlarged by a subsequent statute extending the requisite time limit).

112. *Biddix*, 237 N.C. at 666, 75 S.E.2d at 782.

113. *Id.* It should be noted, however, that the *Biddix* holding was limited only to the facts contained in the case; it may be concluded, therefore, that waiver is possible in the appropriate circumstances. *See Biddix*, 237 N.C. at 665, 75 S.E.2d at 781.


115. *Id.* at 260, 221 S.E.2d at 359.
sel, both parties were mistaken about the meaning of the medical reports, and the plaintiff was subsequently totally unable to work at his trade.\textsuperscript{116} The supreme court found there was no evidence in the record that specifically supported an allegation of fraud, misrepresentation, undue influence or mutual mistake.\textsuperscript{117} None of the reasons given by the plaintiff fell within section 97-17 parameters set out by the legislature.\textsuperscript{118} The parties, therefore, would be bound by the agreement unless, and until, the Commission could find the agreement was in error for one of the section 97-17 reasons.\textsuperscript{119}

Several North Carolina Court of Appeals cases followed the Pruitt standard.\textsuperscript{120} One case is particularly relevant; \textit{Brookover v. Borden, Inc.}\textsuperscript{121} In Borden, the plaintiff, a milk deliveryman, suffered a compensable back injury.\textsuperscript{122} He was rated as having a ten percent permanent partial disability of the back.\textsuperscript{123} He signed a Form 26 agreement which compensated him under N.C. Gen. Stat. § 97-31.\textsuperscript{124} He later sought to set the agreement aside in order to seek benefits under N.C. Gen. Stat. § 97-30.\textsuperscript{125} His request to have the agreement set aside was denied by the Deputy Commissioner, and the Full Commission affirmed.\textsuperscript{126}

The plaintiff appealed to the court of appeals.\textsuperscript{127} He had been unrepresented by counsel when he signed the agreement, and the defendant had failed to explain to him he had the right to elect benefits under another provision of the Act. The plaintiff argued to the court of appeals that he was unable to make an "informed

\textsuperscript{116.} \textit{Id.} at 259, 221 S.E.2d at 359.
\textsuperscript{117.} \textit{Id.}
\textsuperscript{118.} \textit{Id.}
\textsuperscript{119.} \textit{Id.} at 260, 221 S.E.2d at 359.
\textsuperscript{122.} \textit{Id.} at 754, 398 S.E.2d at 605.
\textsuperscript{123.} \textit{Id.}
\textsuperscript{124.} \textit{Id.}
\textsuperscript{125.} \textit{Id.}; N.C. GEN. STAT. § 97-30 (1991) provides for compensation in the event of partial disability. It provides for compensation of two-thirds of the difference between the claimants average weekly wages before the injury and the average weekly wage he is able to earn after the injury.
\textsuperscript{126.} \textit{Borden}, 100 N.C. App. at 754, 398 S.E.2d at 605.
\textsuperscript{127.} \textit{Id.} at 755, 398 S.E.2d at 605.
election of remedies" and should be allowed to rescind the agreement.\textsuperscript{128} The court of appeals affirmed the Full Commission, finding the plaintiff had not shown one of the required grounds for recission under section 97-17 as required by \textit{Pruitt}.\textsuperscript{129} The supreme court denied review.\textsuperscript{130}

In \textit{Cockrell v. Evans Lumber Co.},\textsuperscript{131} the court of appeals allowed recission of a clincher agreement on the grounds of mutual mistake.\textsuperscript{132} Mrs. Cockrell was disabled and totally dependent upon her husband when he was killed.\textsuperscript{133} She received benefits pursuant to a Form 30 agreement ("Agreement for Compensation") under N.C. Gen. Stat. § 97-38.\textsuperscript{134} The defendant employer did not know Mrs. Cockrell was totally dependent upon her husband for support, and Mrs. Cockrell did not know she was entitled to more benefits under section 97-38 than she received in the agreement that she signed.\textsuperscript{135}

The Deputy Commissioner concluded there was a mutual mistake on the part of both parties when the Form 30 agreement was signed.\textsuperscript{136} The Full Commission reversed, finding no mutual mistake.\textsuperscript{137} The court of appeals reversed the Full Commission, finding mutual mistake in the fact that both sides thought the agreement provided everything Mrs. Cockrell was entitled to receive under the Act.\textsuperscript{138} Because the defendant employer represented to Mrs. Cockrell the agreement was a proper one, and since the mistake benefited the employer, "fundamental equitable principles require the mistake not be perpetuated."\textsuperscript{139} Because

\begin{itemize}
  \item \textsuperscript{128} Id.
  \item \textsuperscript{129} 328 N.C. 270, 400 S.E.2d 450 (1991); see also supra notes 114-119 and accompanying text.
  \item \textsuperscript{130} Id.
  \item \textsuperscript{131} 103 N.C. App. 359, 407 S.E.2d 248 (1991).
  \item \textsuperscript{132} Id. at 364, 407 S.E.2d at 250-51.
  \item \textsuperscript{133} Id. at 360, 407 S.E.2d at 248.
  \item \textsuperscript{134} Id. at 361, 407 S.E.2d at 249. A Form 30 Agreement is the Industrial Commission form used for a compensation award for death of a covered employee.
  \item \textsuperscript{135} Id. N.C. GEN. STAT. § 97-38 provides that a dependent of a worker who is killed is entitled to compensation for a period of four hundred weeks. If the spouse of the deceased is disabled and unable to support themselves, the survivor is entitled to compensation for their lifetime or until remarriage. \textit{Id.}
  \item \textsuperscript{136} \\textit{Cockrell}, 103 N.C. App. at 362, 407 S.E.2d at 249.
  \item \textsuperscript{137} Id.
  \item \textsuperscript{138} Id. at 363, 407 S.E.2d at 250.
  \item \textsuperscript{139} Id. at 364, 407 S.E.2d. at 251.
\end{itemize}
mutual mistake\textsuperscript{140} is a grounds for recission under section 97-17\textsuperscript{141} the court allowed the agreement to be rescinded. The decision was not appealed.

Finally, \textit{Glenn v. McDonald}'s\textsuperscript{142} concerned a Form 21 compensation agreement, which the parties, signed which the defendant employer attempted to revoke\textsuperscript{143} prior to approval by the Commission.\textsuperscript{144} The Full Commission ordered the approved agreement be set aside.\textsuperscript{145} The court of appeals reversed.\textsuperscript{146} The court determined that when approving compensation agreements, the Commission may not look to records, files, or evidence not presented to it for consideration, and may not base its decision on information not contained in the record before it.\textsuperscript{147} When the Commission approved the agreement based on the record before it, which did not contain defense counsel's attempt to revoke the agreement, such approval was proper.\textsuperscript{148} The agreement could not be set aside because there was no finding the agreement had been obtained by fraud, misrepresentation, mutual mistake or undue influence.\textsuperscript{149}

As these cases illustrate, the North Carolina courts, prior to \textit{Vernon}, strictly limited the judicial capacity of the Commission to set aside agreements. Before \textit{Vernon}, the only instances in which courts approved the Commission's decision to release the parties from an approved agreement were when the grounds for the rescission were clearly within the parameters of section 97-17.

\textsuperscript{140} Mutual mistake occurs when both parties are under substantially the same erroneous belief as to the facts. E. Allen Farnsworth, \textit{Farnsworth on Contracts}, § 9.3 (1990).

\textsuperscript{141} For the text of the statute, see \textit{supra} note 25.


\textsuperscript{143} \textit{Id.} at 46, 425 S.E.2d at 728. Defense counsel attempted to contact the executive secretary of the Industrial Commission to communicate the revocation of consent. Counsel also submitted a letter to the Industrial Commission revoking consent to the agreement and requesting its return. The Commission never received the letter nor the note of the telephone conversation. \textit{Id.}

\textsuperscript{144} \textit{Id.}

\textsuperscript{145} \textit{Id.}

\textsuperscript{146} \textit{Id.} at 45, 425 S.E.2d at 727.

\textsuperscript{147} \textit{Id.} at 48, 425 S.E.2d at 730.

\textsuperscript{148} \textit{Id.}

\textsuperscript{149} \textit{Id.} at 49, 425 S.E.2d at 730. The court also found the defendant could not deny the truth of the matters asserted in the agreement based on newly acquired information. \textit{Id.}
E. Industrial Commission Review of Compensation Agreements in Other States

In the great majority of states, the uncontested claims procedure takes the form of an agreement between the parties subject to the approval of a compensation board. In New York, a hearing is necessary in every case. At the other end of the spectrum, however, some states allow payment to be made directly from the employer to the employee without any agreement. Some statutes recognize compromises involving concessions by the injured employee, while others have prohibitions against altering statutory compensation rights by agreement. The majority rule appears to be that a claimant may not validly agree to take less compensation than specified by statute. The minority position is that compensation rights may be compromised by the employee. With the decision in Vernon, North Carolina specifically prohibits such concessions by employees.

IV. Analysis

Although workers' compensation law is the subject of a tremendous amount of litigation, it has been estimated that only one-tenth to one-fifteenth of all such cases are litigated. The purpose of the creation of schedules, such as N.C. Gen. Stat. § 97-31, was to reduce the amount of litigation in this area by having the legislature decide the appropriate amount of compensation due for the loss of a major member. The North Carolina Supreme Court, with its decision in Vernon, has made an increase in the amount of litigation in these cases inevitable, and ignored the historical reasoning for the enactment of scheduled injury statutes.

150. 3 Larson, The Law of Workmen's Compensation, § 82.30 (1994). Such agreements are allowed in all but the following states: Nevada, New York, North Dakota, Ohio, Oregon, Utah, Washington, and Wyoming. Id.
151. Id.
152. Id. These states include California, Florida, Michigan, Minnesota and Wisconsin.
153. Id. at § 82.31. These states include: Alabama, Alaska, California, Illinois, Louisiana, Montana, Texas, and Wisconsin. Id.
154. Id.
155. Id. at § 82.32.
156. Id.
157. Id. § 82-10.
A. Vernon v. Steven L. Mabe Builders

Under Industrial Commission Rules, compensation agreements merely have to comply with applicable law. As a result of the decision in Vernon, the Commission will have to engage in some fact finding in every scheduled injury case in which the plaintiff is unrepresented. This is in direct conflict with the intent of the scheduled injury provisions, which is to prevent litigation of cases involving serious injury and to assure the employee is guaranteed fair recovery as determined by the legislature.

As the Vernon court states, the public enacted the Workers' Compensation Act for the purpose of avoiding disabled victims of industry being thrown onto private charity or public relief. The compensation statute was designed to prevent such destitution. This policy argument ignores the other public policy reasons for the Act which are limiting the employer's liability, reducing the litigation involved in the recovery system, and reducing overall costs of compensation. Vernon, however, ignores these factors in favor of greater compensation for individuals. The Vernon

159. Workers' Compensation Rules of the N.C. Indus. Comm'n, Rule 501 (West 1995). Compensation agreements must be completed on Industrial Commission forms and be accompanied by complete medical records. Id.

160. Vernon, 336 N.C. at 432-33, 444 S.E.2d at 195. The Commission will have to determine whether the claimant is eligible for compensation under a more favorable provision, i.e., either section 97-29 or section 97-30, than the one under which the claimant is pursuing compensation.

161. 1C LARSON, THE LAW OF WORKMEN'S COMPENSATION, § 57.14(c) (1994); Vernon, 336 N.C. at 438, 444 S.E.2d at 204 (Meyer, J., dissenting).

162. Vernon, 336 N.C. at 432, 444 S.E.2d at 194.

163. Id.


166. Id.


[The American compensation system does not place the cost on the "public" as such, but on a particular class of consumers, and thus retains a relation between the hazardousness of particular industries and the cost of the system to that industry and consumers of its product. [Thus], in the United States it is more precise to say that the consumer of a particular product pays the cost of compensation protection for the workers engaged in its manufacture.
decision tips the scales of the Act from a balance between the employer’s and the employee’s interests to a scale that is heavily weighted in favor of employee’s rights. Although the public has an interest in having an injured employee receive maximum benefits so the employee will not be forced on public assistance, as well as the public having an interest in a productive workforce, which should not have to be unnecessarily burdened by paying a claimant more than is considered fair for an injury, the legislature is the appropriate body to determine the fairness of compensation for an injury, not the judiciary.

In this case, the compensation that Mr. Vernon received was in compliance with the statute, and thus a fair amount. His employer did not induce him into signing the agreement by improper means. Although the defendant was aware of Dr. Kelly’s note that Mr. Vernon may be totally disabled, the defendant did not believe Mr. Vernon was unable to work. The defendant compensated Mr. Vernon for what had been medically determined to be the extent of his disability. If Mr. Vernon had been represented, it is possible he would have been advised to accept the defendant’s offer of settlement due to problems in proving his total disability.

B. Settlement Agreements vs. Compensation Agreements

The court in Vernon makes no distinction with regards to compensation agreements versus settlement and release agreements (also known as “clinchers”). There are several important differences between the two types of agreements. Settlement

Id. at 222, 443 S.E.2d at 738 (emphasis added). Furthermore, the court opines that consumers rather than the public pay for injured workers, while in Vernon the court is interested in keeping the cost away from the public and placing it upon employers, and ultimately the consumers.

168. Vernon, 336 N.C. at 432, 444 S.E.2d at 194.

169. Id. at 436, 444 S.E.2d at 197 (Meyer, J., dissenting).

170. Id.

171. Vernon v. Stephen L. Mabe Builders, Opinion and Award of Morgan S. Chapman at 5, I.C. No. 701410, (Sept. 21 1990). The Commissioner found the agreement was not entered into by reason of fraud, misrepresentation, or mistake. Id. at 4.


173. Vernon, 110 N.C. App. at 554, 430 S.E.2d at 677. The payment pursuant to the Form 26 agreement compensated Mr. Vernon for the fifteen percent permanent partial disability to his back as determined by Dr. Kelly. Id.
agreements are addressed by the legislature in N.C. Gen. Stat. § 97-17 and compensation agreements are covered in N.C. Gen. Stat. § 97-82.

Section 97-17 allows voluntary settlement of disputes between the employer and the employee as to the amount of the compensation and the time and manner of payment, as long as the settlement ("clincher") is in accordance with the provisions of the Act.\(^\text{174}\) Section 97-82 covers compensation agreements only. It requires the agreement be on the Industrial Commission forms and the agreement be accompanied by a full and complete medical report when it is filed with the Commission.\(^\text{175}\) This section does not contain any provision requiring the agreement to be in accordance with the provisions of the Article.\(^\text{176}\) The reason for this variance is that while clincher agreements do release the parties, compensation agreements do not release the parties from the jurisdiction of the Commission.\(^\text{177}\) There is no need for the Commission to determine whether the employee has received a fair compensation agreement, beyond compliance with the statute, particularly since compliance with the statute has a presumption of fairness.\(^\text{178}\)

The Vernon court cites the Biddix and Caudill cases as requiring full investigation and determination by the Industrial Commission that agreements are fair.\(^\text{179}\) Both Biddix and Caudill, however, were concerned with settlement agreements; in Vernon the compensation agreement was at issue.\(^\text{180}\)

In Vernon the court states that both clincher agreements and compensation agreements determine the rights of an employee.\(^\text{181}\)

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174. For the text of the statute, see supra note 25.
175. For the text of the statute, see supra not 97; see also Workers' Compensation Rules of the N.C. Indus. Comm'n, Rule 501 (West 1995).
177. A claimant may apply for more benefits for up to two years after the last payment is made by the employer if the claimant undergoes a change in condition. See N.C. GEN. STAT. § 97-47.1 (Supp. 1994).
179. Vernon, 336 N.C. at 431, 444 S.E.2d at 194 (quoting Biddix, 237 N.C. at 663, 75 S.E.2d at 780 and Caudill, 258 N.C. at 106, 128 S.E.2d at 133).
180. The Vernon court does not cite any cases which concern compensation, rather than settlement agreements. As discussed above, there are significant distinctions between compensation agreements and settlement agreements. See supra notes 174-178 and accompanying text.
181. Vernon, 336 N.C. at 433, 444 S.E.2d at 195.
This is true only in a somewhat limited sense. When an employee signs a clincher agreement, he is giving up all of his rights under the Workers' Compensation Act in return for a specific sum of money.\textsuperscript{182} When an employee signs a compensation agreement, he does not give up his rights under the Act, except in those situations where he is entitled to recovery under alternative provisions of the Act.\textsuperscript{183}

\textbf{C. Scheduled Injuries vs. Disability Compensation}

Recovery under the scheduled injury provision of the Act may be had without the employee showing any loss of earnings or earning capacity.\textsuperscript{184} This section was intended to expand, not restrict, the employee's remedies.\textsuperscript{185} Because the employee only has to show that the injury was included on the schedule, the recovery under this section may over or under-compensate the claimant.\textsuperscript{186} Recovery was allowed in \textit{Whitley v. Columbia Lumber Co.}\textsuperscript{187}

\begin{itemize}
\item \textsuperscript{182} The \textit{Caudill} case is an illustration of how a clincher agreement can adversely affect a party. Mr. Caudill injured his back in the course of his employment in September, 1957. He signed a clincher agreement which the Industrial Commission approved in November, 1958. The employer made payment of three thousand dollars in return for the full and final settlement of all claims, past, present, and future, arising out of the accident. A few weeks later Mr. Caudill experienced complications and returned to the hospital for surgery; he remained in the hospital for three months. The supreme court held Mr. Caudill was not entitled to further payments because of the clincher agreement he had signed. Had Mr. Caudill only signed a compensation agreement, he would have been able to receive further benefits under section 97-47 (Change in Condition provision). \textit{See also} Morgan v. Norwood, 211 N.C. 600, 191 S.E. 345 (1937) (holding settlement agreement final even when claimant later becomes totally disabled).
\item \textsuperscript{183} An employee who signs a compensation agreement may have the award reviewed for a change in condition under section 97-47 for up to two years from the date of the last payment of compensation. The employee and employer who sign a voluntary compensation agreement remain subject to the jurisdiction of the Industrial Commission. \textit{See generally} Hogan v. Cone Mills Corp., 315 N.C. 127, 337 S.E.2d 477 (1985).
\item \textsuperscript{184} N.C. GEN STAT. § 97-31; \textit{Vernon}, 336 N.C. at 431, 444 S.E.2d at 194.
\item \textsuperscript{185} \textit{Whitley v. Columbia Lumber Co.}, 318 N.C. 89, 348 S.E.2d 336 (1986).
\item \textsuperscript{186} This is with regards to the employee's actual loss of wages.
\item \textsuperscript{187} 318 N.C. 89, 348 S.E.2d 336 (1986). In \textit{Whitley}, the court held for the first time that an employee who was totally disabled as a result of a scheduled injury could recover for total disability under section 97-29. \textit{Id.} Before \textit{Whitley} an employee who suffered a scheduled injury was limited to recovery under section 97-31, regardless of their impairment of earning capacity.
\end{itemize}
under N.C. Gen. Stat. § 97-29 to redress the problem of under-compensation. After the Whitley decision, employees may recover for either their loss of earning capacity or the scheduled injury provision and may choose whichever provision is more beneficial. Scheduled injury recovery has become a "bonus;" specifically, the employee is able to recover for the scheduled injury even if the employee suffers no disability, while being able to recover for total disability if the employee does in fact suffer economic damages.

After Vernon, the employee must receive compensation under the most favorable provision of the Act, or the agreement cannot be approved by the Industrial Commission. Where the employee may potentially recover under more than one section, even if it is questionable that the employee will be able to prove partial or total disability, the Commission will be required to hold a hearing, or engage in other fact finding, to determine the extent of the employee's disability.

Under Vernon, a determination of the employee's disability will be necessary in every case in which a scheduled injury is involved. As a result, the Commission may require that claimants be represented in order to assure compliance with the Vernon decision. This would in turn actually diminish the employee's recovery because he would be obligated to pay the attorney out of the proceeds of his recovery, which could lead to the employee actually receiving less compensation.

188. N.C. GEN. STAT. § 97-29 (1991) provides for compensation in cases of total disability.


190. See Hill v. Hanes Corp., 319 N.C. 167, 353 S.E.2d 392 (1987) (Employee may be compensated for both a scheduled injury and total incapacity to work when the total incapacity is caused by a psychiatric disorder brought on by the scheduled injury.).

191. Vernon, 336 N.C. at 432, 444 S.E.2d at 194 ("We hold, therefore that the statute requires . . . an employee qualifying for disability compensation under both sections 97-29 and 97-31 have the benefit of the more favorable remedy.").

192. As Justice Meyer suggests in his dissent, this decision may result in the Commission requiring that unrepresented plaintiffs in this situation retain legal counsel. Vernon, 336 N.C. at 437, 444 S.E.2d at 197 (Meyer, J., dissenting).

193. Id.

194. Id.
D. Workers Compensation Reform Act of 1994

The court in Vernon held the Industrial Commission must determine, rather than assume, the claimant is knowledgeable about workers' compensation.195 The North Carolina General Assembly recently passed the Workers' Compensation Reform Act of 1994,196 in which it created an ombudsman program to assist unrepresented claimants.197 The purpose of this program is to enable claimants to protect their rights under the Act.198 The ombudsman is to meet with and provide information to injured employees, investigate complaints, and communicate with other parties on behalf of the employee.199 The ombudsman may not, however, represent employees at compensation hearings.200

The General Assembly also revised N.C. Gen. Stat. § 97-18 to institute a direct pay program which allows employers to compensate an injured employee for up to ninety days without admitting liability and without Commission approval.201 The Industrial Commission retains jurisdictions over direct pay claims.202 The employer may investigate the claim and deny compensability at any time during the ninety day period.203 This revision should streamline the system and reduce some of the paperwork involved.204 This new system should alleviate some of the problems created by the Vernon decision in that it allows employers and employees to come to an agreement regarding compensation without requiring Commission approval.205 If the employer and the employee cannot come to an agreement, either may file a request for hearing.206

195. Vernon, 336 N.C. at 434, 444 S.E.2d at 196.
198. Id.
199. Id.
200. Id.
202. Id.
203. Id.
204. Memorandum from Linwood Jones, Staff Counsel, North Carolina General Assembly, to Members of the General Assembly and Other Interested Parties (July 6, 1994).
205. Id.
206. This is essentially the same provision as was in the Act before the revisions. Id.
E. The Judicial Capacity of the North Carolina Industrial Commission

In Vernon, the court focused on the lack of a full investigation by the Commission in its determination that the Commission had not fulfilled its duties when it approved the compensation agreement at issue.\(^{207}\) The Commission, as a court of limited jurisdiction, only has those powers specifically granted to it by statute.\(^{208}\) The Commission has developed rules by which it reviews agreements by employers and employees.\(^{209}\) These rules provide for more complete review of settlement agreements which end the Commission's jurisdiction,\(^{210}\) than compensation agreements, in which the Commission's jurisdiction is continued.\(^{211}\) This is a logical distinction, because once the Commission's jurisdiction has ended, it cannot assist the employee in recovering compensation for his injuries.\(^{212}\)

With the decision in Vernon, the court has judicially expanded the powers of the Industrial Commission. The Commission, after Vernon, may set aside approved agreements which comply with the statute, if it determines such agreements are "unfair" to the employee.\(^{213}\) The standard of fairness the Commission should use, however, is not fully explained by the court. This decision does away with the different standards of review for clincher and settlement agreements and institutes a single standard of review for all agreements.

V. Conclusion

In Vernon v. Steven L. Mabe Builders, the North Carolina Supreme Court held the Industrial Commission must conduct a full investigation to determine the fairness of compensation agreements. The standard of fairness the court desires, however, is unclear. Prior to this decision, such agreements only had to com-

\(^{207}\) Vernon, 336 N.C. at 432, 444 S.E.2d at 195.
\(^{208}\) Biddix, 237 N.C. at 662-63, 75 S.E.2d at 780.
\(^{209}\) N.C. Gen Stat. § 97-80(a) (Supp. 1994) gives the Commission the power to make rules for carrying out the provisions of the Act.
\(^{212}\) Biddix, 237 N.C. at 662, 75 S.E.2d at 780.
ply with the workers' compensation statute before the Industrial Commission would give approval. Presumably, the court in Vernon is requiring the Commission go beyond finding the agreement complies with the statute, and is now requiring the Commission assure the injured employee receives maximum possible benefits.

This new requirement by the North Carolina Supreme Court may be satisfied by the General Assembly's creation of an ombudsman program in the Workers' Compensation Reform Act of 1994. If the ombudsman program does not meet the "investigation" and "fairness" requirements announced in Vernon, however, it is unclear what the results might be. Lower courts could allow approved agreements to be set aside when unrepresented claimants assert they are unaware of the legal consequences of the agreements. Furthermore, the Industrial Commission may have to institute a requirement that a claimant retain counsel before a settlement agreement is approved.

The North Carolina Workers' Compensation Act was passed as a compromise between the interests of employers and employees. With Vernon decision, the North Carolina Supreme Court takes another step moving the balance of those interest in favor of employees, and ignoring the legitimate interests and concerns of employers.

Isabel B. Loytty