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Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001652-WC

NINA BLACKBURN, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF GARY BLACKBURN, DECEASED; LESLIE DWAYNE BLACKBURN, A DEPENDENT CHILD OVER THE AGE OF 18 INCAPABLE OF SELF SUPPORT — APPELLANTS

PETITION FOR REVIEW OF A DECISION OF THE WORKERS' COMPENSATION BOARD
v. ACTION NO. WC-01-72911

LODESTAR ENERGY, INC.; KEMI; HON. KEVIN KING, ADMINISTRATIVE LAW JUDGE; KENTUCKY WORKERS' COMPENSATION BOARD; UNINSURED EMPLOYERS FUND — APPELLEES

AND: NO. 2004-CA-001687-WC

KENTUCKY EMPLOYERS' MUTUAL INSURANCE — APPELLANT

PETITION FOR REVIEW OF A DECISION OF THE WORKERS' COMPENSATION BOARD
v. ACTION NO. WC-01-72911

LODESTAR ENERGY, INC.; ESTATE OF GARY BLACKBURN; THE UNINSURED EMPLOYERS' FUND; HON. KEVIN KING, ADMINISTRATIVE LAW JUDGE; AND WORKERS' COMPENSATION BOARD — APPELLEES

OPINION
AFFIRMING
** ** ** ** **

BEFORE: DYCHE, HENRY, AND TACKETT, JUDGES.

HENRY, JUDGE: Nina and Leslie Blackburn appeal from a July 21, 2004 Opinion of the Workers' Compensation Board affirming a death benefit determination by the Hon. J. Kevin King, Administrative Law Judge ("ALJ"). Their only issue on appeal is whether the Board erred in its finding as to the appropriate amount of death benefits payable. Kentucky Employers Mutual Insurance ("KEMI") appeals from that same decision and presents a number of challenges based upon the Board's finding that it is responsible for paying a 30% enhancement of compensation pursuant to KRS[1] 342.165(1)[2] and KRS 342.375[3] due to safety violations committed by its insured, Lodestar Energy, Inc. Upon review, we affirm as to both appeals.

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[1] Kentucky Revised Statutes.

[2] "If an accident is caused in any degree by the intentional failure of the employer to comply with any specific statute or lawful administrative regulation made thereunder, communicated to the employer and relative to installation or maintenance of safety appliances or methods, the compensation for which the employer would otherwise have been liable under this chapter shall be increased thirty percent (30%) in the amount of each payment. If an accident is caused in any degree by the intentional failure of the employee to use any safety appliance furnished by the employer or to obey any lawful and reasonable order or administrative regulation of the commissioner or the employer for the safety of employees or the public, the compensation for which the employer would otherwise have been liable under this chapter, shall be decreased fifteen percent (15%) in the amount of each payment."

[3] "Every policy or contract of workers' compensation insurance under this chapter, issued or delivered in this state, shall cover the entire liability of the employer for compensation to each employee subject to this chapter, except as otherwise provided in KRS 216.2960, 342.020, 342.345, or 342.352. However, if specifically authorized by the commissioner, a separate insurance policy may be issued for a specified plant or work location if the liability of the employer under this chapter to each employee subject to this chapter is otherwise secured and provided that no employee transferred from one plant or work location to another within the employment of the same employer shall thereby lose any benefit rights accumulated under the average weekly wage

On October 3, 2001, Gary Blackburn was working an extra shift for his employer, Lodestar Energy, Inc. He was asked to drive a spare fuel truck containing approximately 3,000 gallons of fuel into a strip mining pit known as the "Hell Hole," which can only be entered via a steep grade slope. This particular fuel truck was apparently used only when the regular fuel truck was out of service.

A few minutes after Gary began his drive into the "Hell Hole," he was found lying on the side of the road approximately 1,600 feet from the top of the slope, after he apparently jumped out to escape the fuel truck. He would later die from injuries that he sustained while escaping the truck. A subsequent investigation by the United States Department of Labor, Mine Safety and Health Administration ("MSHA") revealed that all six brakes of the fuel truck had maintenance defects that resulted in severely reduced braking capacity. There was also evidence presented that mine management was aware that these brakes would not effectively stop this vehicle on the grade of road on which it was required to travel. Citations were consequently issued concerning the condition of the brakes.

At the time of the accident, Lodestar had a workers' compensation insurance policy with KEMI. Part One, Section E of the policy, titled "Payments You Must Make," specifies that

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concept."

Lodestar is responsible for any payments made by KEMI on Lodestar's behalf that are in excess of the benefits regularly provided under workers' compensation law, including those payments resulting from any serious or willful misconduct on Lodestar's part or from Lodestar's failure to comply with a health or safety law or regulation. Part Two, Section C of the policy, titled "Exclusions," provides that there is no coverage for bodily injury intentionally caused and/or aggravated by Lodestar or for fines or penalties imposed for violation of federal or state law.

Gary's wife Nina and their son Leslie, a dependent adult child, subsequently filed a claim for workers' compensation benefits on behalf of themselves and Gary's estate. Along with basic death benefits, Nina and Leslie sought a 30% safety penalty benefit pursuant to KRS 342.165 because of the circumstances surrounding Gary's death.

In June 2003, Nina and Leslie entered into a partial settlement agreement with Lodestar for payment of basic death benefits. The partial settlement included an agreement that Gary's average weekly wage at the time of the incident in question was $946.28. The parties also agreed that the correct rate of compensation payable to the beneficiaries was $530.07 per week, exclusive of any enhanced compensation payable due to

any safety violations on Lodestar's part. The settlement agreement was approved on June 26, 2003.

On September 24, 2003, Lodestar filed a motion to amend the settlement agreement so as to include the amount of its liability for weekly income benefits as an issue to be decided by the ALJ. Lodestar's motion suggested that a mistake had been made in calculating the appropriate maximum amount for the beneficiaries' weekly death benefit.

In a February 4, 2004 order, the ALJ ruled that the correct death benefit rate was $238.53 per week for Nina and $79.51 per week for Leslie, with the aggregate weekly amount totaling $318.04. Nina and Leslie filed a petition to reconsider these calculations, but the ALJ did not grant relief. The ALJ also ruled that Lodestar had intentionally violated a safety regulation and therefore enhanced the compensation to be paid to the Blackburns by 30% pursuant to KRS 342.165. The ALJ also concluded that KEMI was responsible for this 30% enhancement under its insurance policy with Lodestar because KRS 342.375 provides that every workers' compensation insurance policy "shall cover the entire liability of the employer for compensation to each employee" subject to the Act, and because KRS 342.165 specifically refers to the 30% enhancement as "compensation." The ALJ also noted that KRS 342.910(2) exempts the guaranty funds from liability for any penalties or interest

assessed for any act or omission on the part of any person, but that there is no exemption for "regular" insurance carriers such as KEMI. Accordingly, the ALJ ordered Lodestar and KEMI to pay the Blackburns an additional $95.41 per week. Following a petition for reconsideration filed by the Blackburns,[4] the ALJ's decision was subsequently appealed to the Workers' Compensation Board.

In a July 21, 2004 opinion, the Board held that the ALJ properly calculated the appropriate weekly death benefit owed to Nina and Leslie pursuant to KRS 342.750. The Board further agreed with the ALJ that KEMI was responsible for the 30% enhanced payment to the Blackburns, specifically because it constituted a form of "compensation" under the plain language of KRS 342.165. An appeal to this court followed.

On appeal, Nina and Leslie argue that the ALJ and the Workers' Compensation Board erred in finding that $318.04 per week was the appropriate award for the basic death benefit. They instead assert that the award should be either $530.07 per week or $397.55 per week. The primary basis for Nina and Leslie's contentions is their belief that the ALJ and the Board misapplied the provisions of KRS 342.750 in calculating the appropriate death benefit award. In particular, they contend

[4] In a March 19, 2004 order, the ALJ denied the Blackburns' petition as to the issue of the appropriate calculations for the death benefit, but amended the opinion to include a specific commencement date for enhanced compensation.

that the calculation of income benefits under KRS 342.750 should begin with the actual "average weekly wage of the deceased" as a base number as opposed to the "average weekly wage of the state."

KRS 342.750 deals with how income benefits are awarded to a surviving spouse and dependent children in the event of a work-related death. As Nina and Leslie correctly note in their brief, the benefits payable to said surviving spouse and dependent children are generally based upon the "average weekly wage of the deceased." Of particular note here, KRS 342.750(1)(b) provides that a widow is entitled to 45% of the average weekly wage of the deceased if a child is living with her and an additional 15% for each child. In this specific instance, given that only one dependent child is involved, the maximum aggregate benefit concerned is 60% of the applicable "average weekly wage of the deceased."

With this said, the initial language of KRS 342.750 also sets forth that the payable income benefits are "subject to the maximum limits specified in subsections (3) and (4) of this section." KRS 342.750(3) provides:

> For the purposes of this section, the average weekly wage of the employee shall be taken as not more than the average weekly wage of the state as determined in KRS 342.740. In no case shall the aggregate weekly income benefits payable to all beneficiaries under this section exceed the

> maximum income benefit that was or would have been payable for total disability to the deceased, including benefits to his dependants.

The parties agree that, in 2001, the "average weekly wage of the state as determined in KRS 342.740" was $530.07. KRS 342.750(4) further provides, in relevant part:

> The maximum weekly income benefits payable for all beneficiaries in case of death shall not exceed 75 percent of the average weekly wage of the deceased as calculated under KRS 342.140, subject to the maximum limits in subsection (3) above....

Under Nina and Leslie's analysis of KRS 342.750, the calculation for weekly death benefits would begin with Gary's average weekly wage, $946.28, as a base figure. Pursuant to subsection (4) of this statute, the beneficiaries would only be entitled to a maximum of 75% of this amount per week, which totals $709.71. Since this amount exceeds the maximum limit set forth by subsection (3), $530.07, the latter figure becomes the maximum amount that could possibly be owed to the beneficiaries per week. From here, Nina and Leslie apply KRS 342.750(1)(b) and calculate that 60% of $946.28, Gary's actual weekly wage, is $567.77. Since this amount exceeds the determined maximum base amount of $530.07, Nina and Leslie would be entitled to $530.07 per week. Both the ALJ and the Workers' Compensation Board disagreed with the applicability of this methodology. We are compelled to do the same.

The purpose of review by this court is to correct the Workers' Compensation Board only where we perceive that the Board "has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause gross injustice." Huff Contracting v. Sark, 12 S.W.3d 704, 707 (Ky.App. 2000), quoting Western Baptist Hospital v. Kelly, 827 S.W.2d 685, 687-88 (Ky. 1992). With this said, it is well established that interpretation and construction of a statute is a matter of law for the court. Floyd County Board of Education v. Ratliff, 955 S.W.2d 921, 925 (Ky. 1997). "[A]ny analysis of a workers' compensation issue is necessarily an exercise in statutory interpretation." Williams v. Eastern Coal Corp., 952 S.W.2d 696, 698 (Ky. 1997). As a general rule, we must interpret statutes according to their plain meaning and in accordance with the intent of the legislature. Ratliff, 955 S.W.2d at 925. "To determine legislative intent, a court must refer to 'the words used in enacting the statute rather than surmising what may have been intended but was not expressed.' ... Similarly, a court 'may not interpret a statute at variance with its stated language.'" McDowell v. Jackson Energy RECC, 84 S.W.3d 71, 77 (Ky. 2002), quoting Hale v. Combs, 30 S.W.3d 146, 151 (Ky. 2000) (Citation omitted); see also Commonwealth v. Allen, 980 S.W.2d 278, 280 (Ky. 1998) (Citations omitted). "Put another way, 'courts must

presume that a legislature says in a statute what it means and means in a statute what it says ... [and][w]hen the words of a statute are unambiguous, then, this first canon is also the last: "judicial inquiry is complete."'" McDowell, 84 S.W.3d at 77, quoting Connecticut Nat'l Bank v. Germain, 503 U.S. 249, 253-54, 112 S.Ct. 1146, 1149, 117 L.Ed.2d 391 (1992).

From a reading of KRS 342.750 as a whole, particularly the emphasis placed upon the limitations set forth by subsection (3), it is apparent that the General Assembly intended that on those occasions where the deceased's average weekly wage, as calculated under KRS 342.140, exceeds the average weekly wage of the state, as determined in KRS 342.740, the latter figure is the base amount that should be used as the beginning point in the calculation of death benefits. In this case, as the ALJ and the Workers' Compensation Board correctly determined, that figure would be $530.07, with Nina and Leslie being collectively entitled to 60% of this amount, $318.04, pursuant to KRS 342.750(1)(b).

Nina and Leslie's argument that the base amount to be used as a beginning point in calculations should be Gary's actual average weekly wage is simply irreconcilable with the clear language of KRS 342.750, particularly the language in subsection (3) specifying that "the average weekly wage of the employee shall be taken as not more than the average weekly wage

of the state as determined in KRS 342.740." From a plain reading of this language, we are compelled to conclude that a deceased's actual average weekly wage would only be used as a beginning point in the calculation of benefits when that wage is less than the "average weekly wage of the state." The methodology Nina and Leslie argue should be used to calculate benefits here has no basis whatsoever in the plain language of KRS 342.750. Accordingly, we affirm the decisions of the ALJ and the Board as to the benefits to be paid to the Blackburns.

KEMI's appeal seeks reversal of the ALJ and Board's decisions finding it liable for a 30% increase in the Blackburns' workers' compensation award because of Lodestar's safety violations, pursuant to KRS 342.165 and KRS 342.375. As noted above, KEMI's contract with Lodestar specifically excludes coverage for incidents resulting from a failure to comply with health or safety regulations. However, the administrative bodies below determined that KEMI could not rely on this contract as a way to avoid payment of the 30% increase because it constitutes "compensation" under KRS 342.165. KEMI has appealed the decision of the ALJ and the Board on four grounds: (1) that the 30% enhancement under KRS 342.165 is a "penalty" and not "compensation" for which it is responsible; (2) that KRS 342.165 violates the Equal Protection Clause of the 14th Amendment of the U.S. Constitution; (3) that the Workers'

Compensation Board's ruling makes KRS 342.375 unconstitutional as it violates the Contracts Clause of the U.S. Constitution; and (4) that KRS 342.165 violates KEMI's due process rights under the 14th Amendment of the U.S. Constitution because it allows for the imposition of punitive damages without the safeguard of judicial review.

We initially note that two of the contentions raised by KEMI here—whether the 30% enhancement is "compensation" under KRS 342.165 and whether the enhancement constitutes punitive damages—have been addressed and answered by another panel of this court in AIG/AIU Ins. Co. v. South Akers Mining Co., LLC, 2004 WL 2674303, No. 2004-CA-000729-WC (Nov. 24, 2004), a case that is currently pending appeal to our Supreme Court. In addressing an argument by AIG that its contract provisions, not KRS 342.165, should control in determining whether it should be held liable for a safety violation penalty, the panel cited to Beacon Ins. Co. of America v. State Farm Mutual Ins. Co., 795 S.W.2d 62 (Ky. 1990), for the proposition that "while the right to contract is one of the most basic rights possessed by the citizenry, this right must however yield to the public policy of the state as declared by our General Assembly." Id. at 63. The panel further cited to a number of provisions within the Workers' Compensation Act to support the position that "the whole of the Workers' Compensation Act was intrinsically

designed to compensate injured workers," AIG/AIU at *4, including KRS 342.375(1), which provides that "[e]very policy or contract of workers' compensation insurance under this chapter, issued or delivered in this state, **shall cover the entire liability of the employer for compensation to each employee** subject to this chapter, except as otherwise provided...." AIG/AIU at *5-6 (Emphasis in original). Based on these items, the panel concluded that "the provision in the insurance policy limiting AIG's liability to South Akers does not control." AIG/AIU at *6. We agree with this reasoning, and we reach a similar conclusion.

AIG also raised the argument, as KEMI does here, that the increase in compensation benefits provided for in KRS 342.165 is a "penalty" for the employer's violation of the law; therefore, since a "penalty" is not "compensation," it is not covered by workers' compensation insurance. The panel disagreed with this assertion even though it acknowledged that the consequence of the increase may be to penalize the employer of the insurance carrier. In doing so, the panel specifically referenced the plain language of KRS 342.165(1), which indicates that the increase in benefits is to be applied to compensate employees for benefits "for which the employer would otherwise have been liable." AIG/AIU at *8. We similarly agree that the plain language of KRS 342.165(1) indicates that the increase in

benefits is to be considered an increase in compensation.[5] Consequently, we must reject KEMI's arguments to the contrary.

AIG's final argument—again, an argument raised by KEMI here—was that the increase in compensation set forth by KRS 342.165 is equivalent to punitive damages and, therefore, it should not be held contractually liable. Citing Black's Law Dictionary, the panel noted that punitive damages are generally those damages "awarded in addition to actual damages when the defendant acted with recklessness, malice, or deceit." With this in mind, it noted that there was "nothing in the language of KRS 342.165 to indicate that the legislature intended for the increase in compensation to be punitive in nature" and, further, that "KRS 342.165 refers to the ... increase only in terms of compensation," unlike other statutes where punitive damages are explicitly mentioned, such as KRS 411.130(1). AIG/AIU at *9. Accordingly, the panel concluded that the increase in compensation was not akin to punitive damages. Again, we follow the lead of our fellow panel and affirm its conclusion.

Accordingly, in conjunction with this court's previous rulings in AIG/AIU Ins. Co. v. South Akers Mining Co., LLC, supra, we find that the 30% benefit enhancement to be paid the Blackburns constitutes "compensation" that KEMI is entitled to

[5] In an even more recent case, Realty Improvement Co., Inc. v. Raley, 2005 WL 1252300, No. 2004-CA-002447-WC (May 27, 2005), another panel of this court reached a similar conclusion.

pay on behalf of Lodestar pursuant to the Act, and that this enhancement does not constitute punitive damages of the type implicating the 14th Amendment of the U.S. Constitution. This leaves for analysis KEMI's assertions that KRS 342.165 violates the Equal Protection Clause and that KRS 342.375 violates the Contracts Clause.

We first address KEMI's contention is that KRS 342.165 violates the Equal Protection Clause of the 14th Amendment to the United States Constitution because it creates a disparity in the percentage amount of additional compensation to be paid by an employer (30%) or forfeited by an employee (15%), respectively, for an intentional safety violation. We begin by noting that "acts of the legislature carry a strong presumption of constitutionality." Wynn v. Ibold, Inc., 969 S.W.2d 695, 696 (Ky. 1998). "A statute involving the regulation of economic matters or matters of social welfare comports with both due process and equal protection requirements if it is rationally related to a legitimate state objective. The constitutionality of a statutory classification will be upheld if the classification is not arbitrary, or if it is founded upon any substantial distinction suggesting the necessity or propriety of the classification." Id., citing Kentucky Harlan Coal Co. v. Holmes, 872 S.W.2d 446, 455 (Ky. 1994); Waggoner v. Waggoner, 846 S.W.2d 704 (Ky. 1992); Estridge v. Stovall, 704 S.W.2d 653,

655 (Ky.App. 1985). Stated more succinctly, "[w]hen the statute is a workers' compensation statute, the issue becomes whether there is a rational basis for the perceived discrimination." McDowell v. Jackson Energy RECC, 84 S.W.3d 71, 75 (Ky. 2002), citing Steven Lee Enterprises v. Varney, 36 S.W.3d 391, 395 (Ky. 2000). KEMI has conceded here that its equal protection challenge must be examined under the "rational basis" test.

Our courts have held that a "person challenging a law upon equal protection grounds under the rational basis test has a very difficult task because a law must be upheld if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." Commonwealth ex rel. Stumbo v. Crutchfield, 157 S.W.3d 621, 624 (Ky. 2005), citing United States Railroad Retirement Board v. Fritz, 449 U.S. 166, 101 S.Ct. 453, 66 L.Ed.2d 368 (1980). "[T]he General Assembly need not articulate its reasons for enacting the statute, and this is particularly true where the legislature must necessarily engage in a process of line drawing." Id., citing Fritz, 449 U.S. at 179, 101 S.Ct. at 461. "In fact, '[i]t is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature. A legislative choice, under the rational basis test, will not be subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or

empirical data.'" Id., citing F.C.C. v. Beach Communications, Inc., 508 U.S. 307, 315, 113 S.Ct. 2096, 2102, 124 L.Ed.2d 211 (1993). "We will accept at face value contemporaneous declarations of governmental purposes, or in the absence thereof, rationales construed after the fact, unless our examination of circumstances forces us to conclude that they could not have been a goal of the classification." Id., citing Barket, Levy & Fine, Inc. v. St. Louis Thermal Energy Corp., 21 F.3d 237 (8th Cir. 1994). "As long as reasons for the legislative classification may have been considered to be true, and the relationship between the classification and the goal is not so attenuated as to render the distinction arbitrary or irrational, the legislation survives rational basis scrutiny." Id. at 625, citing Haves v. City of Miami, 52 F.3d 918, 922 (11th Cir. 1995). "Thus, a party seeking to have a statute declared unconstitutional is faced with the burden of demonstrating that there is no conceivable basis to justify the legislation." Holbrook v. Lexmark International Group, Inc., 65 S.W.3d 908, 915 (Ky. 2001), citing Buford v. Commonwealth, 942 S.W.2d 909 (Ky.App. 1997).

Our Supreme Court has recognized that the purpose of the penalty provision of KRS 342.165 "is to promote workplace safety by encouraging workers and employers to follow safety rules and regulations." Apex Mining v. Blankenship, 918 S.W.2d

225, 228 (Ky. 1996).[6] KEMI argues that there is no available authority that would give support as to why employers are now penalized at a higher rate than employees for violations pursuant to KRS 342.165. However, we are inclined to disagree.

KRS 338.031, entitled "Obligations of employers and employees" and commonly referred to as the "general duty" clause, provides:

> (1) Each employer:
> (a) Shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;
> (b) Shall comply with occupational safety and health standards promulgated under this chapter.
>
> (2) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this chapter which are applicable to his own actions and conduct.

While this provision makes clear that employers and employees are both obligated to comply with occupational and health standards, it also specifically places an additional duty upon employers to provide their employees with a work environment free from recognized hazards likely to cause death or serious

[6] It should be noted that the decision in Apex Mining was rendered before KRS 342.165 was amended by the 2000 General Assembly to increase an employer's penalty to 30% for a safety violation. At the time the case was decided, both employers and employees were penalized 15%.

harm.[7] Such a decision by the General Assembly reflects a policy decision on its part that employers are in a better position than employees to secure a safe and hazard-free place of employment and, accordingly, have a duty to do so. It stands to reason that the General Assembly may view an employer's intentional violation of a safety rule as more egregious than an individual employee's—particularly given that employers have a specifically defined duty to maintain a safe work environment—and, accordingly, the punishment for such a violation should be more substantial. While KEMI may disagree with this perspective, we cannot say that it is illogical or irrational for purposes of "rational basis" analysis given the standards that we are required to follow. Consequently, we must reject KEMI's argument.

KEMI's final assertion is that the Board's ruling imposing mandatory coverage of the 30% enhancement, without exclusion, makes KRS 342.375 unconstitutional as a violation of Article I, § 10, Clause 1 of the United States Constitution, also known as the Contracts Clause, which provides that "no state shall ... pass any bill of attainder, ex post facto law or law impairing the obligation of contracts." KEMI specifically argues that the Board's interpretation of "compensation" as

[7] We also note that in Apex Mining, our Supreme Court clarified that the violation of KRS 338.031(1)(a) that was presented by the facts of that case sufficiently complied with the requirements of KRS 342.165 to justify the imposition of a penalty. Apex Mining, 918 S.W.2d at 229.

including the 30% enhancement and its ruling that KRS 342.375 mandates that all "compensatory" liabilities arising under the Workers' Compensation Act are to be covered under an insurance contract constitute a retroactive interference with contract in violation of the Contracts Clause. Again, however, we are compelled to disagree.

The U.S. Supreme Court has made clear that the Contracts Clause "is directed against legislative action only." Barrows v. Jackson, 346 U.S. 249, 260, 73 S.Ct. 1031, 1037, 97 L.Ed. 1586 (1953). "It has been settled by a long line of decisions, that the provision of section 10, article 1, of the federal Constitution, protecting the obligation of contracts against state action, is directed only against impairment by legislation and not by judgments of courts." Tidal Oil Co. v. Flanagan, 263 U.S. 444, 451, 44 S.Ct. 197, 198-99, 68 L.Ed. 382 (1924). Of particular relevance here, the U.S. Supreme Court has specifically clarified that "**the provisions of the Constitution of the United States for the protection of contract rights are directed only against the impairment of them by constitutions or laws adopted or passed subsequent to the date of the contract from which such rights spring, and do not reach decisions of courts construing constitutions or laws which were in effect when the contract was entered into**." Long Sault

Development Co. v. Call, 242 U.S. 272, 277, 37 S.Ct. 79, 81, 61 L.Ed. 294 (1916) (Emphasis added).

KEMI acknowledges in its brief that its insurance contract with Lodestar was effectuated after KRS 342.375 was enacted. It instead takes issue with how the Board interpreted this statute. Given the U.S. Supreme Court's ruling in Long Sault, however, we do not believe that the Contracts Clause is applicable here. We also note our belief that the Board's interpretation of KRS 342.375 is reasonably derived from a plain reading of the statute. Accordingly, we must reject KEMI's argument.

The opinion and decision of the Workers' Compensation Board is affirmed.

ALL CONCUR.

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