

RENDERED: MARCH 29, 2019; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2018-CA-001492-WC

UNINSURED EMPLOYERS' FUND

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-14-00638

TLC COMPANIES; LIS LOGISTICS, LLC; CARRIER  
CONCEPTS; LEONEL CASAS; HON. JANE RICE  
WILLIAMS, ADMINISTRATIVE LAW JUDGE; AND  
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: TAYLOR, K. THOMPSON AND L. THOMPSON, JUDGES.

THOMPSON, L., JUDGE: The Uninsured Employers' Fund ("UIF") appeals from an opinion of the Workers' Compensation Board ("the Board") reversing in part and remanding the March 19, 2018 final opinion, award and order rendered by

Hon. Jane Rice Williams, Administrative Law Judge (“ALJ”). The question before the ALJ and the Board was whether a policy of insurance provided by Zurich North America (“Zurich”) to TLC Companies (“TLC”) provided coverage for an injury sustained by Leonel Casas (“Casas”) during the course of his employment. The Board reversed and remanded the ALJ’s determination that Zurich was estopped from denying coverage. For the reasons stated below, we find no error and AFFIRM the opinion of the Board.

LIS Logistics, LLC (“LIS”) is a trucking company located in Louisville, Kentucky. TLC is a professional employer organization (“PEO”) which furnishes employees to its clients and provides payroll processing, tax filings, background screening, and unemployment claim processing. TLC also provides workers’ compensation insurance for the assigned employees under a policy of insurance provided by Zurich.

LIS and TLC entered into an agreement under which TLC would screen, approve, insure, and pay employees provided to LIS. The contract barred LIS from directly hiring, leasing or otherwise employing any employee in the categories for which TLC furnished employees. Under the terms of the agreement, if LIS failed to submit an individual to TLC for approval, that person was characterized as an employee of LIS and not TLC.

In 2013, Leonel Casas went to LIS to apply for a truck driving position. LIS sent Casas to Carrier Concepts, where he completed an application. Carrier Concepts was not affiliated with LIS or TLC. After Casas completed a drug screen, he was hired and paid by LIS. Casas began driving trucks for LIS. Less than a month later, Casas was injured in a motor vehicle accident during the course of his employment.

Casas filed a claim for workers' compensation benefits, and proof was taken. The claim was bifurcated on the issues of 1) the employment relationship, and 2) Casas' injuries. On March 8, 2015, the ALJ rendered an opinion finding that Casas was an employee of LIS, and that TLC had coverage for the medical claim as insured through Zurich. This conclusion was largely based on a certificate of coverage previously filed with the Department of Workers' Claims ("DWC") identifying Zurich as the insurance carrier of LIS. After the ALJ denied various petitions for reconsideration, Casas began receiving temporary total disability ("TTD") benefits. Other matters were resolved by way of an interlocutory opinion rendered on October 28, 2016, in which the ALJ characterized as compensable Casas' cervical fusion surgery.

TLC and Zurich appealed to the Board on issues of the employment relationship and insurance coverage. Their arguments centered on the assertion that the evidence did not support the determination that every LIS employee was

insured by Zurich. On September 14, 2018, the Board rendered an opinion which forms the basis for the instant appeal. It determined in relevant part that the ALJ erred in relying on the certificate of coverage to conclude that Zurich was estopped from denying coverage. It found as persuasive TLC's argument that the ALJ may not rely solely on the certificate of coverage when contrary evidence established that TLC and Zurich did not provide workers' compensation insurance to every employee of LIS. The Board also determined that Casas believed himself to be an employee of LIS and not TLC, that there was no evidence that TLC accepted Casas as a leased employee, and no evidence that Zurich received premiums related to Casas' employment. The Board found that LIS did not submit Casas to TLC for screening, that Casas was not on the list of assigned employees, and that TLC had previously screened Casas for a different client and rejected him based on a drug-related felony in his record. Ultimately, the Board concluded that the certificate of coverage filed with the DWC, taken alone, was not a sufficient basis to estop Zurich from denying coverage for Casas' injury. As LIS was not insured by Zurich and TLC for non-assigned employees, the Board remanded the matter to the ALJ to address the responsibility of LIS and the UEF as to the awarded benefits. This appeal followed.

UEF now argues that the Board exceeded its statutory authority when it reversed in part and remanded the ALJ's decision holding that Zurich was

estopped from denying coverage by virtue of the notice of coverage filed with the DWC. Specifically, UEF argues that the public must be able to rely on the notice of coverage, that the terms of a private agreement cannot nullify this public policy, and that the Board erred in failing to so rule. The substance of UEF's argument is that a workers' compensation insurance policy must cover the entire liability of the employer, and that an insurer may not selectively deny coverage for any particular injured employee. In support of this argument, UEF directs our attention to Kentucky Revised Statute ("KRS") 342.375, which states that "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[.]" In sum, UEF contends that Zurich is estopped from denying coverage of all LIS employees, and that the Board erred in failing to so rule.

The parties do not contest that the service agreement entered into between TLC and LIS sets forth certain procedures which LIS is to follow in order to assign an employee to TLC. As part of this process, TLC agreed to screen, approve and pay the employee, and LIS is expressly prohibited from hiring, leasing or using any employee in the categories for which TLC furnishes employees. The agreement further provided that if LIS failed to submit the employee to TLC for screening and approval, that individual is characterized as an employee of LIS and

not TLC. LIS is responsible for providing workers' compensation insurance for non-assigned employees.

The question for our consideration, then, is whether public policy demands that the notice of coverage filed with the DWC operates to establish insurance coverage on all TLC and LIS employees as UEF so argues, despite the clear language of the service agreement between TLC and LIS stating that TLC provides workers' compensation coverage only for assigned employees. Having closely examined the record and the law, we must answer this question in the negative.

KRS 342.340(1) requires an employer to provide workers' compensation coverage for its employees, and it must file proof of same with the DWC, as set out in KRS 342.340(2). KRS 342.615(4) provides that an employer who uses a PEO may insure the leased employees either directly or by contracting with the PEO to provide coverage. The associated administrative regulations acknowledge that a PEO may provide coverage for leased employees, but not every employer. See 803 KAR<sup>1</sup> 25:230 Section 4(4), which states that a PEO must file a "listing of the *leased employees* associated with each lessee[.]" (Emphasis added). We conclude from the foregoing that the statutory and regulatory scheme

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<sup>1</sup> Kentucky Administrative Regulation.

requires that when a PEO contracts to provide coverage only for leased employees, it is not bound to cover all employees including non-leased employees.

When seeking to uncover legislative intent, we look first to the language of the statute and give the words their plain and ordinary meaning. *Osborne v. Commonwealth*, 185 S.W.3d 645, 648-49 (Ky. 2006). Only when the statute is ambiguous do we look to extrinsic evidence of public policy. *Lewis v. Jackson Energy Co-op. Corp.*, 189 S.W.3d 87, 94 (Ky. 2005). Because the construction and application of a statute is a question of law, it is subject to *de novo* review. *Richardson v. Louisville/Jefferson County Metro Gov't*, 260 S.W.3d 777, 779 (Ky. 2008) (citing *Osborne*, 185 S.W.3d at 648).

KRS Chapter 342 is not ambiguous on the issue before us. The Legislature provided a framework under which a PEO may contract with an employer to provide leased and insured employees without being bound to provide workers' compensation coverage for the employer's non-leased employees. As the statutory and regulatory language is clear on this point, the general public has no reasonable expectation that the filing of a notice of coverage with the DWC estops Zurich from denying coverage even as to LIS's non-leased employees. The Board properly so concluded, and we find no error.

For the foregoing reasons, we AFFIRM the opinion of the Workers' Compensation Board.

TAYLOR, JUDGE, CONCURS.

THOMPSON, K., JUDGE, DISSENTS.

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NO BRIEF FOR LIS LOGISTICS,  
LLC