

# **IMPORTANT NOTICE** **NOT TO BE PUBLISHED OPINION**

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RENDERED: NOVEMBER 25, 2009

NOT TO BE PUBLISHED

# Supreme Court of Kentucky

2009-SC-000328-MR

DATE

12/16/09 Kelly Klaber D.C.

KENTUCKY EMPLOYERS MUTUAL INSURANCE  
AUTHORITY, also known as KEMI, also known as  
KENTUCKY EMPLOYERS MUTUAL INSURANCE COMPANY

APPELLANT

V. ON APPEAL FROM COURT OF APPEALS  
CASE NO. 2009-CA-000403-OA  
LAUREL CIRCUIT COURT NOS. 05-CI-00725 AND 07-CI-00843

HON. GREGORY ALLEN LAY,  
JUDGE, LAUREL CIRCUIT COURT

APPELLEE

AND

CRAIG GEORGE, INDIVIDUALLY,  
AND D/B/A CRAIG GEORGE  
TRUCKING; ET AL

REAL PARTIES IN INTEREST

## MEMORANDUM OPINION OF THE COURT

### AFFIRMING

This appeal is taken from a decision by the Court of Appeals to deny Appellant's motion for a writ of prohibition on the ground that a circuit court has jurisdiction to decide a dispute between an insurance carrier, an employer, and an insurance agent over coverage under a workers' compensation insurance policy.

Gordon Howe, a dump truck driver, was involved in a serious traffic accident while in the scope of his employment. He filed a workers' compensation claim against his employer, Craig George, individually and

d/b/a Craig George Trucking, and against Ready Mix Concrete of Somerset, Inc., a business which had contracted with Craig George Trucking.

At the workers' compensation hearing, an Administrative Law Judge ("ALJ") found that Howe was injured and disabled in the scope of his employment and was entitled to receive benefits. In making the ruling, the ALJ noted that there was some confusion as to whether Craig George Trucking's workers' compensation insurance covered the injured employee, but expressly stated that "[t]hankfully, [the issue of insurance coverage] is not an issue to be addressed in this opinion." The ALJ then entered an award against Craig George Trucking and/or the insurance carrier of Craig George Trucking, if Howe was covered under any policy.

After the hearing, two civil actions were filed. Craig George, individually and d/b/a Craig George Trucking, sued the workers' compensation carrier, Kentucky Employers Mutual Insurance Authority ("KEMI"), as well as the insurance agent, Roy Martin, individually, and the insurance agency, The Martin Agency, Inc. In the second action, the Kentucky Associated General Contractors Self-Insurance Fund, on behalf of Ready Mix Concrete of Somerset, Inc., sued Craig George Trucking, seeking indemnity for the amount it paid in benefits to Howe in the workers' compensation action. The two actions were consolidated and Martin filed a cross-claim against KEMI.

KEMI filed motions for summary judgment against Craig George Trucking and a motion to dismiss Martin's cross-claim. In support of its

motion for summary judgment, KEMI contends that the actions are barred by res judicata or judicial estoppel, and that the Laurel Circuit Court lacked jurisdiction to adjudicate the claims. The circuit court denied KEMI's motion for summary judgment, and KEMI filed a petition for a writ of prohibition, maintaining that the circuit court lacked jurisdiction because the current action was barred by the exclusive remedy provisions of the Workers' Compensation Act. The Court of Appeals denied the writ, stating that "the circuit court is not adjudicating the claimant's workers' compensation benefits." Instead, the Court of Appeals believed that the circuit court had jurisdiction because the litigation concerned a dispute in insurance coverage, not the validity of the claim under the workers' compensation statute.

This appeal followed. For the following reasons, we affirm the decision of the Court of Appeals.

The Court of Appeals has broad discretion in the issuance of writs of prohibition, and each case must be considered on its own merits. Chamblee v. Rose, 249 S.W.2d 775, 776 (Ky. 1952). Because writs interfere with the proceedings of a trial court and the efficient dispatch of our appellate duties, the courts of this Commonwealth have formulated a rule governing the discretionary choice between issuing a writ and relegating a petitioner to the right to appeal. See Hoskins v. Maricle, 150 S.W.3d 1 (Ky. 2004). This Court has consistently held that a writ of prohibition is appropriate in two circumstances: (1) when the lower court is acting without or beyond its

jurisdiction and there is no adequate remedy through an application to an intermediate court; or (2) when the lower court is acting erroneously within its jurisdiction, and there exists no adequate remedy by appeal or otherwise and great injustice and irreparable injury would result. Id. at 10.

KEMI argues that this case is an example of the lower court acting beyond its jurisdiction.

KEMI points to KRS 342.690(1), claiming that Craig George Trucking's exclusive remedy to litigate a coverage dispute would have been during the workers' compensation proceeding. That statute states in pertinent part:

If an employer secures payment of compensation as required by this chapter, the liability of such employer under this chapter shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death. For purposes of this section, the term "employer" shall include a "contractor" covered by subsection (2) of KRS 342.610, whether or not the subcontractor has in fact, secured the payment of compensation.

Workers' compensation is a creature of statute, and all available remedies and procedures described are, by its own terms, exclusive. Williams v. Eastern Coal Corp., 952 S.W.2d 696, 698 (Ky. 1997). This Court has previously stated that an insurance carrier may be made a party to the workers' compensation proceeding, and that the ALJ has jurisdiction to decide questions concerning the insurer's obligation to pay workers' compensation

benefits on behalf of its insured. Custard Ins. Adjusters, Inc. v. Aldridge, 57 S.W.3d 284, 287 (Ky. 2001). In addition, once made a party, that insurer can question whether or not it had issued a valid policy that covered the employer at the time of the injury. Lawrence Coal Co. v. Boggs, 218 S.W.2d 670, 671-72 (Ky. 1949).

However, the interpretation of insurance contracts and the enforcement of the rights of the insured concern matters which are beyond the purview of the authority vested in the ALJ. These questions are governed by the policy of insurance and not by any provisions of KRS Chapter 342. See Wolfe v. Fidelity & Cas. Ins. Co. of New York, 979 S.W.2d 118 (Ky.App. 1998); A. Larson, *The Law of Workmen's Compensation*, § 92.42 (1996) (“[W]hen the rights of the employee in a pending claim are not at stake, many commissions disavow jurisdiction and send the parties to the courts for relief. This may occur when the question is purely one between two insurers, one of whom alleges that it has been made to pay an undue share of an award to a claimant, and the award itself is not being under attack. Or it may occur when the insured and insurer have some dispute entirely between themselves . . .”).

In the instant case, the Court of Appeals correctly noted that Howe’s rights were fully adjudicated before the ALJ and “the circuit court is not adjudicating the claimant workers’ compensation benefits.” The ALJ has already determined that Howe was injured during the course of employment and set the amount of benefits to be awarded. The litigation currently at issue

concerns an insurance coverage dispute between Craig George Trucking, KEMI, and an insurance agent. Accordingly, it arises under the terms of the insurance contract rather than under Chapter 342 and, thus, does not come within the Board's subject-matter jurisdiction. See Wolfe, 979 S.W.2d at 121.

For the foregoing reasons, the decision of the Court of Appeals is hereby affirmed.

All sitting. All concur.

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