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## Commonwealth Of Kentucky

### Court of Appeals

NO. 2004-CA-000729-WC

AIG/AIU INSURANCE COMPANY

APPELLANT

V. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
CLAIM NO. WC-99-65703

SOUTH AKERS MINING COMPANY, LLC;  
HONORABLE DONNA H. TERRY,  
ADMINISTRATIVE LAW JUDGE;  
RONNIE CHARLES, DECEASED,  
TAMMY CHARLES, ADMINISTRATRIX;  
AND WORKERS' COMPENSATION BOARD

APPELLEES

#### OPINION AFFIRMING

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BEFORE: BARBER, McANULTY, AND MINTON, JUDGES.

MINTON, JUDGE: Ronnie Charles, an underground miner, was killed in a tragic roof fall accident while employed by South Akers Mining Company. The Mine Safety and Review Commission found that South Akers failed to follow its roof plan, endangered its miners, and violated several mine-safety statutes and regulations. An Administrative Law Judge awarded Charles's wife, Tammy, and his son, Cody, benefits, including a 15 percent

increase in compensation, based on South Akers's failure to follow safety regulations.<sup>1</sup> The ALJ also held AIG/AIU Insurance Company, the workers' compensation carrier for South Akers, responsible for payment of the increase in compensation benefits. AIG appealed and the Workers Compensation Board affirmed the ALJ's decision.

The questions we are asked to review are whether the insurance policy between AIG and South Akers shields AIG from liability for the increase in compensation, and whether the statutory scheme of workers' compensation necessarily places responsibility for payment of the increase on AIG. Because we believe that the insurance contract cannot trump the statutory requirements, and because we believe the statute holds AIG responsible for the payment, we affirm the decision of the Board.

The facts of this case are not in dispute. Therefore, we need only address the legal arguments.

AIG first argues it should not be held liable for the 15 percent increase in compensation because its insurance policy with South Akers shields AIG from liability when there has been a violation of the law or safety regulations. The pertinent portion of the insurance policy reads:

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<sup>1</sup> Kentucky Revised Statutes (KRS) 342.165(1).

#### F. Payments You Must Make

You are responsible for any payment in excess of the benefits regularly provided by the workers [sic] compensation law including those required because:

1. of your serious and willful misconduct;
2. you knowingly employ an employee in violation of law;
3. you fail to comply with a health or safety law or regulation; or
4. you discharge, coerce or otherwise discriminate against any employee in violation of the workers [sic] compensation law.

If we make any payments in excess of the benefits regularly provided by the workers [sic] compensation law on your behalf, you will reimburse us promptly.

AIG argues that since "contracts voluntarily made between competent persons are not to be set aside lightly," the contract, rather than the statute, in this case, is controlling. We disagree.

In Beacon Ins. Co. of America v. State Farm Mutual Ins. Co., the Kentucky Supreme Court recognized 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."<sup>2</sup> Our courts have interpreted the purpose of the "penalty" provision

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<sup>2</sup> Ky., 795 S.W.2d 62, 63 (1990).

of KRS 342.165 to be the promotion of "workplace safety by encouraging workers and employers to follow safety rules and regulations."<sup>3</sup>

AIG argues that since the applicable provision in the insurance policy does not expressly offend the public policy underneath KRS 342.165, the contract should control. In support of this argument, AIG posits that since the goal of the statute is to promote workplace safety, then the 15 percent increase is a "penalty" imposed on the employer to deter blameworthy conduct. Thus, AIG asserts the 15 percent increase is not "compensation" and, therefore, is not covered by South Akers's workers' compensation insurance.

We agree that the purpose behind KRS 342.165 is to promote safety. But we also believe that the whole of the Workers' Compensation Act was intrinsically designed to compensate injured workers. This policy is expressed in the clear language of the statute:

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**

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<sup>3</sup> Apex Mining v. Blankenship, Ky., 918 S.W.2d 225, 228 (1996).

**fifteen percent (15%) in the amount of each payment.**<sup>4</sup>

To establish fully the policy behind the statute, we believe we must also look to the rationale behind other applicable provisions of the Workers' Compensation Act. Several sections discourage insurance contracts that limit the liability of the insurance carrier. For instance, all employers are required either to insure their workers' compensation liability, or to provide proof that they are financially able to pay the compensation directly.<sup>5</sup> Insurance policies may not be issued unless they contain:

the agreement of the insurer that it will promptly pay to the person entitled to it **all benefits** conferred by this chapter and all installments of the compensation that may be awarded or agreed upon, and that the obligation shall not be affected by any default in the giving of any notice required by such policy, or otherwise.<sup>6</sup>

Likewise, "[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

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<sup>4</sup> KRS 342.165(1) (emphasis added). The statute was amended in 2000 to impose a 30 percent increase in compensation benefits, as opposed to a 15 percent increase, if the employer is found to be in violation of the law. But because Charles's accident occurred in 1999, the pre-amendment version of the statute applies.

<sup>5</sup> KRS 342.340(1).

<sup>6</sup> KRS 342.365 (emphasis added).

otherwise provided in KRS 216.2960, 342.020, 342.345, or 342.352.”<sup>7</sup>

Based on the language of these statutes, and based on the requirement that contracts must yield to public policy, we conclude that the provision in the insurance policy limiting AIG’s liability to South Akers does not control. The statutes cited require employers to be fully covered by their insurance carriers. The reason for this is to ensure adequate compensation for employees and to prevent employers’ funds from depletion before adequate compensation is recovered. No waiver provisions are mentioned. Moreover, there is no indication that the 15 percent increase in compensation required by KRS 342.165 was intended to fall outside the framework of workers’ compensation benefits.

Even if the contract did apply, we do not believe the 15 percent increase in compensation could be considered in “excess” of workers’ compensation benefits, as provided in the AIG/South Akers contract. Therefore, we hold that the insurance policy between AIG and South Akers does not preclude AIG from liability for the 15 percent increase in compensation.

Second, AIG argues that even if the contract does not apply, the statutory scheme does not place responsibility for payment of the 15 percent increase in compensation on an

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<sup>7</sup> KRS 342.375 (emphasis added).

employers' workers compensation carrier. Although AIG phrases its argument in a variety of ways, their main tenet is that the 15 percent increase in compensation benefits provided for under KRS 342.165 is a "penalty" for South Akers's violation of the law; therefore, since a "penalty" is not "compensation," it is not covered by workers' compensation insurance. We disagree.

The most important rule of statutory interpretation is that the statute is to be given its "plain meaning."<sup>8</sup> This Court adheres to the plain meaning of a statute, "unless to do so would constitute an absurd result."<sup>9</sup> The General Assembly has directed that "[a]ll statutes of this state shall be liberally construed with a view to promote their objects and carry out the intent of the legislature."<sup>10</sup>

Looking at the plain meaning of KRS 342.165, we believe the purpose of the statute is to provide increased compensation for employees who are injured as a result of their employer's intentional violation of a safety regulation. The object of workers' compensation law is clear, as is the goal of requiring employers to obtain workers' compensation insurance. Injured employees are to be compensated without fear that the

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<sup>8</sup> Wheeler & Clevinger Oil Company, Inc. v. Washburn, Ky., 127 S.W.3d 609, 614 (2004).

<sup>9</sup> *Id.*, quoting Executive Branch Ethics Com'n v. Stephens, 92 S.W.3d 69, 73 (2002).

<sup>10</sup> KRS 446.080(1); Commonwealth v. Bowles, Ky.App., 107 S.W.3d 912, 915 (2003).

liable employer will be financially unable to provide an adequate remedy. The legislature intended it to be so, and we are not compelled to interpret the language of KRS 342.165 any other way.

While we acknowledge that the consequence of the 15 percent increase may be to penalize the employer or the insurance carrier, the language of the statute indicates that the increase is to be applied to compensate employees for benefits "for which the employer would otherwise have been liable."<sup>11</sup> Therefore, we hold that the 15 percent increase is "compensation" for which AIG, as the workers compensation carrier for South Akers, is responsible.

Finally, AIG argues that the 15 percent increase in KRS 342.165 is equivalent to punitive damages; and therefore, it should not be held liable. Again, we disagree.

Punitive damages are those damages "awarded in addition to actual damages when the defendant acted with recklessness, malice, or deceit."<sup>12</sup> The purpose of punitive damages is generally to deter blameworthy conduct.<sup>13</sup>

Though we agree that the result of the 15 percent increase may be to deter conduct on the part of the employer,

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<sup>11</sup> KRS 342.165.

<sup>12</sup> BLACK'S LAW DICTIONARY (8<sup>th</sup> ed.)

<sup>13</sup> *Id.*

there is nothing in the language of KRS 342.165 to indicate that the legislature intended for the increase in compensation to be punitive in nature. Unlike other statutes where punitive damages are explicitly mentioned,<sup>14</sup> KRS 342.165 refers to the 15 percent increase only in terms of compensation. Therefore, we do not believe the 15 percent increase in compensation is akin to punitive damages.

For these reasons, we conclude that AIG is liable for the 15 percent increase in compensation incurred as a result of South Akers's violation of the law. So, we affirm the decision of the Workers' Compensation Board.

ALL CONCUR.

BRIEF FOR APPELLANT:

Dennis R. McGlincy  
Louisville, Kentucky

BRIEF FOR APPELLEE SOUTH AKERS  
MINING COMPANY, LLC:

Sherri P. Brown  
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BRIEF FOR APPELLEE TAMMY  
CHARLES, ADMINISTRATRIX:

Miller Kent Carter  
Pikeville, Kentucky

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<sup>14</sup> Compare, Kentucky's wrongful death statute, KRS 411.130(1): "If the act was willful or the negligence gross, punitive damages may be recovered."