

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI
NINETEENTH JUDICIAL CIRCUIT

FILED

NOV 30 2005

BRENDA A. UMSTATTD
CLERK CIRCUIT COURT
COLE COUNTY, MISSOURI

Missouri Alliance for Retired Americans;)
Missouri State Council of Fire Fighters;)
Building and Construction Trades Council of St. Joseph;)
Central Trades & Labor Council of Cape Girardeau;)
Greater Kansas City Building &)
Construction Trades Council:)
American Federation of State, County & Municipal)
Employees Kansas Missouri Council No. 72;)
Operative Plasterers' & Cement Masons' International)
Association;)
Amalgamated Transit Union Local 1287;)
Boilermakers Local Lodge No. 83;)
Boilermakers Local Lodge No. D-455)
Communications Workers of America District 6;)
Communications Workers of America Local 6301;)
Communications Workers of America Local 6310;)
Communications Workers of America Local 6313;)
Communications Workers of America Local 6314;)
Communications Workers of America Local 6320;)
Communications Workers of America Local 6350;)
Communications Workers of America Local 6355;)
Communications Workers of America Local 6372;)
Communications Workers of America Local 6377;)
International Brotherhood of Electrical Workers)
Local No. 1;)
International Brotherhood of Electrical Workers)
Local No. 124;)
International Brotherhood of Electrical Workers)
Local No. 453;)
International Brotherhood of Electrical Workers)
Local Union No. 545;)
International Union of Elevator Constructors Local 12;)
Central Jackson County Fire/EMS Local No. 3133)
International Association of Fire Fighters;)
Chillicothe Firefighters Association Local 2460)
International Association of Fire Fighters;)
Hannibal Firefighters Local 1211 International)
Association of Fire Fighters;)
Kansas City Fire Chiefs Local 3808 International)
Association of Fire Fighters;)
Lee's Summit Fire Fighters Association Local 2195)
International Association of Fire Fighters;)

Case No. _____

Division _____

Local No. 42 International Association of Fire Fighters;)
 Professional Firefighters Local 2665 International)
 Association of Fire Fighters;)
 Professional Firefighters of Independence Local 781)
 International Association of Fire Fighters;)
 Raymore Firefighters Association Local 3112)
 International Association of Fire Fighters;)
 Springfield Firefighters Local 152 International)
 Association of Fire Fighters;)
 Union of Professional Fire Fighters, Dispatchers &)
 Emergency Medical Employees Local 73)
 International Association of Fire Fighters;)
 Glaziers, Architectural Metal and Glassworkers Local)
 Union No. 513;)
 International Association of Heat & Frost Insulator &)
 Asbestos Workers Local No. 1;)
 International Association of Heat & Frost Insulators &)
 Asbestos Workers Local No. 27;)
 Iron Workers Local No. 10;)
 International Association of Machinists and Aerospace)
 Workers Local Lodge 778;)
 International Association of Machinists and Aerospace)
 Workers Progressive Lodge 41;)
 Nurses United/AFT Healthcare Local No. 5126;)
 International Union of Painters and Allied Trades)
 District Council No. 3;)
 Pipefitters Association Local Union 533;)
 Operating Engineers Local 148;)
 Operative Plasterers & Cement Mason Local)
 Union No. 518;)
 Plumbers and Gas Fitters Local Union No. 8;)
 Kansas City Police Officers Association, Fraternal)
 Order of Police Lodge No. 99;)
 Service Employees International Union Local 2000;)
 Sheet Metal Workers Local No. 2;)
 Sprinkler Fitters Local 314;)
 Teamsters Local Union No. 6;)
 Teamsters Local Union No. 41;)
 Teamsters Local Union No. 245;)
 Teamsters Local Union No. 600;)
 Teamsters Local Union No. 618;)
 Teamsters Local Union No. 688;)
 Teamsters Local Union No. 838;)
 Teamsters Local Union No. 955;)

Transport Workers Union of America Local No. 530;)
 United Auto Workers Local Union 249;)
 United Auto Workers Local Union 282;)
 United Food and Commerical Workers Local 655;)
 United Union of Roofers, Waterproofers & Allied)
 Workers No. 20;)
 United Steelworkers Local 11-6;)
 United Steelworkers Local 11-194;)
 United Steelworkers Local 11-205;)
 United Steelworkers Local 164;)
 United Steelworkers Local 790;)
 United Steelworkers Local 853;)
 UNITE HERE Local 1106;)
)
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 Plaintiffs,)
)
 v.)
)
 DEPARTMENT OF LABOR AND)
 INDUSTRIAL RELATIONS, DIVISION)
 OF WORKERS' COMPENSATION)
)
 Serve: Pat Secrest, Director)
 3315 W. Truman Blvd.)
 Jefferson City, MO 65102)
)
 Defendant.)
)
)
 HON. JEREMIAH W. NIXON)
)
 Serve: Attorney General of the State of Missouri)
 Post Office Box 899)
 Jefferson City, Missouri 65102)

PETITION FOR DECLARATORY JUDGMENT

INTRODUCTION

1. The people of Missouri in 1926 adopted by referendum a workers' compensation law to address the dire problem of workers killed and injured in the workplace. The law's purpose was to provide medical care and compensation to those hurt on the job, assist them in reentering the productive workforce, and provide a financial incentive for employers to invest in a safe workplace. See R. Robert Cohn, "History of Workmen's Compensation Law", reprinted in 15 V.A.M.S. 17-52 (1965), at 22-24. The original law (now "Worker's Compensation Act"), enacted as Chapter 287 of the Revised Statutes of Missouri, amounted to a social contract. Workers voluntarily gave up their common-law remedy against employers for workplace injuries. In exchange, the statute was to provide immediate medical care and limited compensation to employees through an administrative system that would be more certain, simpler, and not dependent upon fault or the fault-based defenses available to employers in the tort system.

2. Within the space of just 72 days the 2005 Missouri General Assembly introduced and passed Senate Bill 1 and 130 [hereinafter "SB1"], which the Governor signed into law on March 30, 2005. SB1 drastically altered Missouri's workers compensation system with the purported aim of reducing costs to employers.

3. SB1 amended 30 different sections of Chapter 287 to limit the types of job-related injuries and deaths that would be compensable, reintroduce fault-related defenses available to employers, and place procedural hurdles in the path of workers with valid claims. Not a single provision benefiting injured workers or their families was added. SB1 breaches the social contract by unilaterally negating much of the quid pro quo given to employees in exchange for

their common law rights. As a result, the Missouri Workers Compensation Act [hereinafter “the Act”], no longer serves as an adequate substitute for injured workers’ tort remedies.

4. In addition, although the stated aim of SB1 was to attract and keep employers in Missouri, the enacted restrictions on workers compensation claims have no rational relationship to that end. Finally, specific provisions of SB1 violate rights Missourians have guaranteed for themselves in their state constitution and the Constitution of the United States. Plaintiffs therefore seek declaratory and injunctive relief from this court.

Plaintiffs for their cause of action against Defendant state:

PARTIES

5. Plaintiff Missouri Alliance for Retired Americans is a Not For Profit Corporation organized under the laws of the state of Missouri, which remains in good standing. Its mission is to ensure social and economic justice and full civil rights for all citizens so that they may enjoy lives of dignity, personal and family fulfillment and security. The Alliance believes that all older and retired persons have a responsibility to strive to create a society that incorporates these goals and rights and that retirement provides them with opportunities to pursue new and expanded activities with their unions, civic organizations and their communities. Members of this Plaintiff include significant numbers of older workers who have retired from one job but who continue to work in Missouri, and are therefore subject to the Missouri Workers Compensation Act and the provisions of SB1. Plaintiff has standing to bring this suit on behalf of its members who would themselves have standing to assert their claims. Plaintiff’s members suffer present and substantial harm as a result of SB1.

6. The remaining Plaintiffs are local, regional and international labor unions or are local and regional labor councils and trade associations representing workers who are subject to the Missouri Workers Compensation Act and the provisions of SB1. Their missions encompass the responsibility to take actions to protect and enhance the health and safety of their members. Plaintiffs have standing to bring this suit on behalf of their respective individual members who would themselves have standing to assert their claims. Plaintiffs' union or council members suffer present and substantial harm as a result of SB1.

7. By restricting the types of work-related injuries compensable under the Act and adding to the defenses available to employers, SB1 substantially reduces the present value of the workers compensation coverage provided to all workers covered by the statute. Upon its effective date, SB1 imposed significant costs of the risks of work-related injuries on Missouri workers, including the members of plaintiff unions, councils, and associations. These immediate adverse impacts confer standing upon workers subject to the Act.

8. In addition, specific provisions of SB1 infringe upon the rights of members of plaintiff unions, councils and associations separate and apart from the merits of their compensation claims. These include §287.170.4, under which employees receiving temporary disability benefits are now subject to loss of those payments if they are terminated by their employers, even for reasons wholly unrelated to their injury. Under §287.120.6(3), employees now face intrusive alcohol and drug testing if they are injured at work, regardless of whether they were using such substances and regardless of whether they file a claim for workers compensation benefits. §287.390.5 imposes restrictions on fees that employees can pay for legal representation, creating uncertainty and limiting their ability to retain an attorney.

9. These are immediate adverse effects and sources of uncertainty that entitle workers to seek a declaratory judgment of their rights. Plaintiffs have standing to bring this declaratory judgment action as representatives for their members affected by the statute. *See Missouri Health Care Assn. v. Attorney General*, 953 S.W.2d 617, 620 (Mo. 1997) (en banc) (association standing to bring declaratory judgment actions challenging statutory amendments affecting its members); *see also Texas Workers' Compensation Comm'n v. Garcia*, 893 S.W.2d 504, 519 (Tex. 1995) (holding that Texas AFL-CIO has standing to bring a declaratory judgment action challenging the constitutionality of amendments to the workers compensation act).

10. Defendant Department of Labor and Industrial Relations, Division of Workers Compensation is charged with the responsibility of administering Missouri's workers compensation program, as amended by SB1. §287.410, §287.615, §287.650 RSMo.

JURISDICTION and VENUE

11. This Court has jurisdiction over this matter pursuant to Article V, §14, Constitution of Missouri (1945) and is authorized to render a declaratory judgment under Chapter 527, Revised Statutes of Missouri. Venue of this suit is proper in Cole County because Defendant Department of Labor and Industrial Relations is an executive branch department with its principal office in Jefferson City, Missouri (Cole County). Mo. Const., Art. IV, § 20. The Attorney General has been served as required by §527.110 RSMo.

STATEMENT OF FACTS

12. The purpose of the “Worker’s Compensation Act,” enacted as Chapter 287 of the Revised Statutes of Missouri, is to provide compensation on a non-fault basis for medical care and lost income for workers who have suffered accidental injury arising out of and in the course of employment, to promote return to work by injured employees, and to provide financial incentive for employers to invest in workplace safety.

13. The cost of premiums charged to employers for workers compensation insurance is sensitive to the business cycle. Periods of high investment returns produce “soft” markets, during which carriers cut prices to gain premium dollars to invest. These are followed by “hard” markets, when insurers respond to low investment returns by raising rates to protect profits.

14. Figures compiled by the Department of Labor, Division of Workers’ Compensation show that, subsequent to deregulation of workers compensation insurance in 1994, workers compensation costs to Missouri employers have followed national trends. The prevailing hard market in 1994-95 yielded high premiums, followed by a fall in premiums during the late 1990’s, and rising in premiums in 2001-03.

15. The premium increases in 2001-03 reflected declining investment returns due to poor stock market performance and lower interest rates. Other factors leading to higher prices for insurance were:

- continuing increases in the cost of medical care and prescription drugs
- sharply higher reinsurance costs
- losses due to the September 11 tragedy and uncertainty surrounding coverage for possible future terrorist attacks.

16. The number of workers compensation claims did not play a significant role in the increase in workers compensation costs to employers. Missouri Department of Labor figures show that both the number of workplace injuries and the number of claims filed in Missouri have declined since 1995.

17. Missouri Department of Labor reports that the cost of workers' compensation coverage to Missouri employers falls in about the middle, compared to other states. Missouri ranks 26th highest among all states and fourth among the ten states in this region.

18. In 2004, rates for Missouri employers again declined. On average, Missouri employers do not pay significantly more for workers compensation coverage than they did in 1994. In constant dollars, they pay less.

19. On Mar. 17, 2005, the General Assembly enacted Senate Bills 1 and 130 [hereinafter "SB1"]. The governor signed the bill into law on March 30. The legislative purpose was to attract and keep businesses in Missouri by reducing the cost of workers compensation to Missouri employers.

20. The legislature sought to accomplish this goal by amending more than thirty sections of Chapter 287. The SB1 amendments pertinent to this action (with deleted text in brackets and added material in bold) are as follows:

21. SB1 amends §287.020 to eliminate work-relatedness as a determinant of a compensatory claim and imposes a restrictive definition of "accident."

287.020.2. The word "accident" as used in this chapter shall[, unless a different meaning is clearly indicated by the context, be construed to] mean an unexpected [or unforeseen identifiable event or series of events happening suddenly and

violently, with or without human fault,] **traumatic event or unusual strain identifiable by time and place of occurrence** and producing at the time objective symptoms of an injury **caused by a specific event during a single work shift**. [An injury is compensable if it is clearly work related. An injury is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability.] An injury is not compensable [merely] because work was a triggering or precipitating factor.

22. SB1 amends §287.020.3 to eliminate the standard of whether employment was a substantial factor in causing the injury, and instead limits compensable injuries to those where the accident was the prevailing factor in causing both the resulting medical condition and disability. A disease, stroke or heart attack is an injury if the accident was the prevailing factor in causing the medical condition.

287.020.3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. [The injury must be incidental to and not independent of the relation of employer and employee. Ordinary, gradual deterioration or progressive degeneration of the body caused by aging shall not be compensable, except where the deterioration or degeneration follows as an incident of employment.] **An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. "The prevailing factor" is defined to be the**

primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

(2) An injury shall be deemed to arise out of and in the course of the employment only if:

(a) It is reasonably apparent, upon consideration of all the circumstances, that the [employment] **accident** is [a substantial] **the prevailing** factor in causing the injury; and

(b) [It can be seen to have followed as a natural incident of the work; and

(c) It can be fairly traced to the employment as a proximate cause; and

(d)] It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life;

* * *

(4) A cardiovascular, pulmonary, respiratory, or other disease, or cerebrovascular accident or myocardial infarction suffered by a worker is an injury only if the accident is the prevailing factor in causing the resulting medical condition

23. SB1 adds §287.020.3(3), to make an injury not compensable, even if the accident was the prevailing factor, if it resulted, even indirectly, from idiopathic causes. An “idiopathic” cause is one which is innate or peculiar to the individual. Previously, such injuries were compensable if

