[Cite as *All Tools, Inc. v. Indus. Comm.*, 2002-Ohio-3507.]

IN THE COURT OF CLAIMS OF OHIO

ALL TOOLS, INC., et al.	:	
Plaintiffs	:	CASE NO. 91-10225
v.	:	DECISION
INDUSTRIAL COMMISSION OF OHIO, et al.	:	Judge J. Warren Bettis
Defendants	:	

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{¶1} In lieu of trial, the court granted the parties leave to submit this case on briefs and joint stipulations of fact. The matter is now before the court for determination on the issues of liability and damages.

{¶2} Plaintiffs, on behalf of the certified plaintiff class,[1] allege that defendants are liable, pursuant to the provisions of Sub S.B. 192, for the refund of premiums that plaintiffs paid into the former Intentional Tort Fund (ITF), R.C. 4121.80. The statutory provisions that gave rise to creation of the fund were declared unconstitutional by the Supreme Court of Ohio in *Brady v. Safety-Kleen Corp.* (1991), 61 Ohio St.3d 624. Additionally, plaintiffs seek reimbursement of attorney fees.

{¶3} Defendants assert that plaintiffs have no constitutional right to the refund of premiums. Rather, defendants maintain that plaintiffs' right to a refund is limited to the provisions of

[1]Pursuant to an entry dated April 13, 1992, the certified class is defined as "all private employers who have paid premiums into the Intentional Tort Fund which was part of a statutory scheme deemed unconstitutional."

Section 5 of Sub S.B. 192, the Workers' Compensation Intentional Tort Disbursement Fund (Disbursement Fund) and that any such refund shall be effected as a credit to the administrative assessment charge to each employer for the 1993 rating year. Plaintiffs counter that all employers who contributed to the ITF have a right to a refund regardless of whether the employer had an administrative assessment for 1993.

{¶4} The parties agree that members of the certified plaintiff class who were subject to an administrative assessment for the rating year beginning July 1, 1993, are entitled to a prorated credit from the Disbursement Fund, according to the terms of Sub S.B. 192. Therefore, the issues remaining before the court are: 1) whether members of the plaintiff class who made payments to the ITF in the time period between 1986 and 1991, but were no longer in business as of the rating year beginning July 1, 1993, are also entitled to a prorated credit to be paid out of the Disbursement Fund; and 2) whether the plaintiff class is entitled to an award of attorney fees. For the reasons that follow, the court answers in the negative.

{¶5} This case arose out of the demise of the ITF. In 1986, the Ohio General Assembly enacted former R.C. 4121.80, which directed the state of Ohio to provide liability insurance to Ohio employers for claims of intentional tort filed by state employees. All Ohio employers, including state agencies, were required to make premium payments into the ITF. The premiums were assessed and collected by the administrator of the Bureau of Workers' Compensation, pursuant to Ohio Adm.Code 4123.1-17-39. However, in 1991, the Supreme Court of Ohio declared R.C. 4121.80 unconstitutional in toto. *Brady*, supra. As a result, the state ceased collecting premiums, making damage determinations and paying intentional tort judgments.

{¶6} On September 29, 1992, the General Assembly enacted Sub. S.B. 192,[2] which created, inter alia, the Disbursement Fund and provided for the transfer of ITF monies to that fund. As a result, funds were to be dispersed on a prorated basis to employers who had contributed to the ITF. The disbursement would take the form of a credit to the administrative assessment charge made against each employer during the 1993 rating year. However, in order to obtain the credit, an employer must have had an assessment for the rating year beginning July 1, 1993. Thus, the issue of disbursement arose for those employers who paid into the fund between 1986 and 1991 but who were no longer in business as of the 1993 rating year.

{¶7} Plaintiffs assert that a failure to provide a prorated credit to businesses which were no longer operating at the beginning of the rating year on July 1, 1993, is a taking without just compensation in violation of the due process guarantee of the Fifth Amendment to the United States Constitution, as made applicable to the state of Ohio through the Fourteenth Amendment. Plaintiffs also allege equal protection violations.

{¶8} The test used in determining whether a statute is constitutional under the Equal Protection Clause depends upon whether a fundamental interest or suspect class is involved.

{¶9} "Under the equal protection clause, in the absence of state action impinging on a fundamental interest or involving a suspect class, a rational basis analysis is normally used. Where the traditional rational basis test is used great deference is paid

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[2]Although enacted in 1992, Sub S.B. 192 remains uncodified because it was immediately challenged as unconstitutional upon its passage. See *Rossborough Mfg. Co., et al. v. J. Wesley Trimble*, Case No. 1:92CV1916. On September 5, 1995, the federal district court dismissed plaintiffs' claims, ruling that Section 5 of Sub S.B. 192 was constitutional and that plaintiffs had no vested rights in the monies held in the former ITF because R.C. 4121.80 was void ab initio. Plaintiffs appealed that ruling to the Sixth Circuit Court of Appeals, where no decision has been issued.

to the state, the only requirement being to show that the differential treatment is rationally related to some legitimate state interest." *State ex rel. Heller v. Miller* (1980), 61 Ohio St.2d 6, 11, 15. See, also, *Lyle Constr., Inc. v. Div. of Reclamation* (1987), 34 Ohio St.3d 22.

{¶10} Where a fundamental interest or suspect class is at issue, a stricter test is used, *Massachusetts Bd. of Retirement v. Murgia* (1976), 427 U.S. 307, and the government is required to demonstrate that a classification created by law is necessary to promote a compelling governmental interest. *State ex rel. Brown v. Summit Cty. Bd. of Elections* (1989), 46 Ohio St.3d 166, 168. The difference in treatment of employers as participants in the ITF does not involve a fundamental right or a suspect class. Therefore, the appropriate level of review is the rational-basis test.

{¶11} The purpose of Section 5, Sub S.B. 192, was to disburse monies from a fund that ceased to exist following the *Brady* decision. In contemplating how to accomplish this goal, the General Assembly sought the use of an existing administrative process, the Bureau of Workers' Compensation, and enacted legislation aimed toward a rational resolution of the problem through a fair, efficient and quick disbursement of funds. The court finds that the differential treatment of then-existing employers in 1993 as compared with employers who were defunct in that year is rationally related to a legitimate state interest; i.e., the efficient disbursement of funds.

{¶12} To say that all qualifying employers are entitled to a refund, in lieu of a credit for the 1993 rating year, is to ignore the enormity of the procedural morass involved with disbursing refunds to businesses no longer in existence. Taking into consideration the issues involved with the various forms of

business organization from sole proprietorships to complex corporate organizations, the court finds that the General Assembly acted upon a rational basis by enacting Sub S.B. 192, and its attendant disbursement scheme. As stated by the Supreme Court of Ohio in *Fabrey v. McDonald Village Police Dept.*, 70 Ohio St.3d 351, 1994-Ohio-368, "Our equal protection review does not require us to conclude that the state has chosen the best means of serving a legitimate interest, only that it has chosen a rational one." Accordingly, the court finds that there is a rational basis for the disparate treatment at issue in this case, and that Sub S.B. 192 does not violate the equal protection clause of the Ohio Constitution (Article I, Section 2) or United States Constitution.

{¶13} Plaintiffs' unconstitutional-takings argument asserts that a failure to provide a prorated credit to businesses which were no longer operating as of the rating year beginning July 1, 1993, constitutes a taking without just compensation. However, that argument fails to take into consideration the quid pro quo nature of R.C. 4121.80. Plaintiffs paid premiums into the ITF and, in return, the state provided liability insurance for intentional torts. Plaintiffs received compensation for their premiums in the form of protection from the risk of intentional tort liability. Any right to a refund is limited to the provisions of Section 5 of Sub S.B. 192. Accordingly, the court finds that Sub S.B. 192 does not violate Section 19, Article I of the Ohio Constitution; Section 2, Article One of the Ohio Constitution, or the equal protection and due process clauses of the United States Constitution.

{¶14} For the foregoing reasons, judgment shall be rendered in favor of defendants.

J. WARREN BETTIS
Judge

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