COMMONWEALTH OF KENTUCKY
SUPREME COURT
NO. 2024–SC–0169

MINOVA USA, INC. — APPELLANT

v. ON REVIEW FROM KENTUCKY COURT OF APPEALS
CASE NO. 2022–CA–1534
SCOTT CIRCUIT COURT NO. 178–CI–00772

TOM JOLLY — APPELLEE

KENTUCKY DEFENSE COUNSEL, INC.'S *AMICUS CURIAE* BRIEF

Respectfully submitted,
Joseph (Joey) A. Wright (#95178)
THOMPSON MILLER & SIMPSON PLC
734 West Main Street, Suite 400
Louisville, Kentucky 40202
jwright@tmslawplc.com
T: (502) 585–9900
F: (502) 585–9993

CERTIFICATE OF SERVICE

On October 29, 2024, this motion was electronically filed with the Court and copies were served via U.S. Mail on the following: Kate Morgan, Clerk of the Kentucky Court of Appeals, 360 Democrat Drive, Frankfort, KY 40601 | Hon. Kathryn H. Gabhart, Scott Circuit Court Judge, 119 N. Hamilton Street, Georgetown, KY 40324 | Tina M. Foster, Scott Circuit Clerk, 119 N. Hamilton Street, Georgetown, KY 40324 | *Counsel for Appellant*: Robert E. Stopher, Robert D. Bobrow, Boehl Stopher & Graves, LLP, 400 W. Market Street Suite 2300 Louisville, KY 40202 | *Counsel for Appellee*: D. Todd Varellas, Varellas & Varellas PLLC, 360 East Vine Street Suite 320, Lexington, KY 40507.

JOSEPH (JOEY) A. WRIGHT
Counsel for Kentucky Defense Counsel, Inc.

INTRODUCTION

Jolly was injured while working and received workers' compensation benefits from his employer. Minova contracted with Jolly's employer for trucking/hauling services for materials necessary to make one of its signature products. Under Kentucky's workers' compensation scheme, because Jolly's contracted work was a regular and recurrent—integral, even—aspect of Minova's business, Minova is immune from Jolly's personal-injury lawsuit. Jolly's exclusive remedy—workers' compensation benefits—was fulfilled by his employer.

This immunity has been recognized in Kentucky for decades. The Court of Appeals' opinion blurs longstanding immunity and injects unnecessary confusion for Kentucky's employers, employees, contractors, and subcontractors. More directly, the Court of Appeals added new requirements for businesses to obtain immunity, but did not provide any clear guidance on these requirements' application.

The trial court's summary judgment should be reinstated and clarity restored.

PURPOSE AND INTEREST OF *AMICUS CURIAE*

Kentucky Defense Counsel, Inc., is an organization of civil defense litigators licensed in Kentucky that was organized to assist in improving the administration of justice in Kentucky courts. KDC members regularly defend clients in personal-injury lawsuits, much like Appellants' counsel here. This case's result is, therefore, of great interest to KDC and its members.

STATEMENT OF POINTS AND AUTHORITIES

STATEMENT OF THE CASE

Amicus curiae KDC adopts herein by reference the Statement of the Case contained in the Appellants' Brief, which upon information and belief, accurately reflects the record in this case.

In KDC's opinion it is important, however, to highlight some undisputed facts:

- To manufacture its resin capsules,[1] Minova requires ground calcium carbonate/limestone filler—limestone filler is necessary for the resin capsules' main ingredients.
- Minova contracted with Trimac to pick up, haul, and deliver limestone filler from its vendor in Tennessee. Trimac employed Jolly.
- In 2017, Trimac hauled and delivered 389 loads of limestone filler to Minova.
- Jolly received workers' compensation benefits from his employer, Trimac, for the injuries alleged in his personal-injury suit against Minova.

ARGUMENT

Kentucky's Workers' Compensation Act is "social legislation, a product of compromises by workers and employers."[2] In exchange for benefits "awarded without regard to fault," workers agree to "forego common law

[1] Resin capsules are used in mining and construction industries, primarily for anchoring bolts to support the roof of the mine shaft or other construction area and prevent cave-ins. The resin capsule is placed in a drilled hole in the roof, a bolt is driven in to activate the capsule, and the capsule then hardens to anchor the bolt and support the roof to protect workers.

[2] *Labor Ready, Inc. v. Johnson*, 289 S.W.3d 200, 204–05 (Ky. 2009).

remedies."[3] Employers likewise agree to pay workers' benefits and forego "common law defenses in exchange for immunity from tort liability."[4] Stated differently, "an employer's immunity follows its liability for workers' compensation benefits."[5] Those benefits are a worker's *exclusive* remedy against any employer for their injuries.[6]

"Employer" is defined broadly. Its definition includes "contractors," *i.e.* someone who "contracts with another . . . (b) [t]o have work performed of a kind which is a regular or recurrent part of the work of the trade, business, occupation, or profession of such person shall for the purposes of this section be deemed a contractor, and such other person a subcontractor."[7] "Regular"

---

[3] *Id.*

[4] *Id.*

[5] *Id.*; *see also Falk v. Alliance Coal, LLC*, 461 S.W.3d 760, 765 (Ky. 2015) ("[O]ne of the purposes of the Act [is] to extend benefits to employees without the need to prove fault, while protecting employers from tort liability.").

[6] KRS 342.690(1) ("The liability of an employer to another person who may be liable for or who has paid damages on account of injury or death of an employee of such employer arising out of and in the course of employment and caused by a breach of any duty or obligation owed by such employer to such other *shall be limited to the amount of compensation and other benefits for which such employer is liable under this chapter on account of such injury or death.*") (emphasis added).

[7] KRS 342.610(2). "Work" is defined as "providing *services* to another in return for renumeration on a regular and sustained basis in a competitive economy." KRS 342.0011(34) (emphasis added). Here, Minova contracted with Trimac for transportation/hauling *services*—it did not contract for goods.

and "recurrent" are given their plain, expected meanings: "customary, usual or normal" and "occurring or appearing again or repeatedly," respectively.[8]

Thus, "if a defendant qualifies as a contractor, 'it has no liability in tort to an injured employee of a subcontractor.'"[9] Kentucky has long referred to this as "up the ladder" immunity.[10] This immunity's purpose is to "discourage a contractor from subcontracting work that is a regular or recurrent part of its business to an irresponsible subcontractor in an attempt to avoid the expense of workers' compensation benefits."[11] It is fundamental in workers' compensation systems across the country. In fact, virtually the entire country recognizes immunity for statutory employers or up-the-ladder entities.[12]

---

[8] *General Elec. Co. v. Cain*, 236 S.W.3d 579, 586–87 (Ky. 2007). Recurrent simply requires repeated work, but does not require it be done "with the preciseness of a clock." *Id.*

[9] *Cabrera v. JBS USA, LLC*, 568 S.W.3d 865, 869 (Ky. 2019) (quoting *Fireman's Fund Ins. Co. v. Sherman & Fletcher*, 705 S.W.2d 459, 461 (Ky. 1986)); *General Elec. Co. v. Cain*, 236 S.W.3d 579, 585 (Ky. 2007) ("[L]ike any other employers [contractors] are immune from tort liability with respect to work-related injuries whether or not the immediate employer actually provided worker's compensation coverage."); *see also Hill v. Phoenix Paper Wickliffe LLC*, 2024 WL 4312240, at *2 (W.D. Ky. Sept. 26, 2024) ("So contractors that carry workers' compensation coverage and benefit indirectly from the labors of others, just like employers or 'subcontractors' that benefit directly, enjoy 'exclusive protection 'in place of all other liability' from claims asserted outside the workers' compensation system.").

[10] *See, e.g., Cabrera*, 568 S.W.3d at 869 (citing *Goldsmith v. Allied Bldg Components, Inc.*, 833 S.W.2d 378, 379 (Ky. 1992)).

[11] *Black v. Dixie Consumer Prods., LLC*, 835 F.3d 579, 589 (6th Cir. 2016) (quoting *Doctors' Assocs., Inc. v. Uninsured Employers' Fund*, 364 S.W.3d 88, 91 (Ky. 2011)).

[12] *See* Larson's *Worker's Compensation Law* § 70.01 (noting that 80% of the country recognizes contractors as employers under workers' compensation schemes); Larson's *Worker's Compensation Law* § 111.04 (noting that "forty-

I. The Court of Appeals' analysis places undue emphasis on factors this Court has emphasized have "no significance" and are not dispositive.

The Court of Appeals held that a contractor under KRS 342.610(2)(b) must show that the work at issue "would normally be expected to perform with its own employees" and/or that it was equipped to do so or "any similarly-situated business . . . would have done so."[13] And despite acknowledging Trimac's delivery of limestone filler was "clearly a necessary function," the Court of Appeals held it was "not of the same type of work addressed in any of the previous cases" so there was no binding authority on the issue.[14]

Notably, however, the statutory "contractor" definition has no requirement—or even *mention*—that a business must use, or at least be equipped to use, its own employees for the contracted work. Nor does the statutory language reference similarly situated businesses. Nearly forty years ago, this Court held simply that "a person who engages another to perform a part of the work which is a recurrent part of his business, trade, occupation is a

---

four states" recognize contractors as employers and "thereby, in effect, ma[ke] the employer for the purposes of the compensation statute, it is obvious that it should enjoy the regular immunity of an employer from third-party suit"); *see also e.g.*, *Garlick v. Trans Tech Logistics, Inc.*, 636 Fed. Appx. 108 (3d Cir. Dec. 18, 2015) (applying Pennsylvania law 77 P.S. § 461 contractor immunity to trucking company); *State ex rel. Beutler, Inc. v. Midkiff*, 621 S.W.3d 491 (Mo. 2021) (applying Section 287.040 to extend immunity to statutory employer to chain of subcontractors in case involving dump-truck accident).

[13] Op. at p. 13.

[14] Op. at p. 13–14.

contractor."[15] And an entity was still a contractor "[e]ven though [it] may never perform that particular job with [its] own employees" as long as the "job is one that is usually a regular or recurrent part of his trade and occupation."[16] This Court emphasized that simply because the work was a type that the business at issue "did not do for itself but usually subcontracted to others" was "of no significance."[17]

In *General Electric Co. v. Cain*,[18] this Court recognized that "regular" work was "customary, usual, or normal to the particular business (including work assumed *by contract* or required by law) or work that the business repeats with some degree of regularity."[19] Additionally, this Court pointed out

---

[15] *Fireman's Fund Ins. Co. v. Sherman & Fletcher*, 705 S.W.2d 459 (Ky. 1986).

[16] *Id.*; *see also U.S. Fidelity & Guar. Co. v. Technical Minerals, Inc.*, 934 S.W.2d 266 (Ky. 1996); *Miller v. Kentucky Power Co.*, 683 S.W.3d 669, 672 (Ky. App. 2023); *Wright v. Dolgencorp, Inc.*, 161 S.W.3d 341, 344 (Ky. App. 2004); *Estate of Young v. ISP Chemicals, LLC*, 2018 WL 2277395 (Ky. App. May 18, 2018) (granting summary judgment despite allegedly no evidence contractor performed the work because "[t]here is no genuine dispute or lack of evidence that tank washing is a regular and recurrent part of Ashland's business. Ashland contracted with Quality to provide those services. Thus, Ashland took on the role of contractor while Quality Carriers took on the role of sub-contractor."); *Black v. Dixie Consumer Products LLC*, 835 F.3d 579, 586 (6th Cir. 2016) ("Even though Dixie may never perform that particular job with [its] own employees, [it] is still a contractor if the job is one that is usually a regular or recurrent part of [its] trade or occupation.").

[17] *Fireman's Fund*, 705 S.W.2d at 461; *see also Cabrera*, 568 S.W.3d at 869; *Pennington v. Jenkins-Essex Const., Inc.*, 238 S.W.3d 660 (Ky. 2006); *Dilts v. United Grp. Servs., LLC*, 2010 WL 497730, at *5 (E.D. Ky. Feb. 5, 2010) ("if work otherwise qualifies as 'regular or recurrent,' then the fact that it is performed completely by subcontractors is not significant.").

[18] 236 S.W.3d 579 (Ky. 2007).

[19] *Id.* at 588 (emphasis added).

that the purported contractor's use (or potential use) of employees for the contracted work was *not* dispositive. Instead, *Cain* identified that an alleged contractor's use (or lack thereof) of employees in otherwise performing the contracted work was a *factor* to consider in determining the "work of the . . . business."[20] The test was "relative, not absolute."[21] *Cain* did not "creat[e] a new test, but rather it summarized the existing test."[22] Stated differently, "the overarching gist of *Cain*" was that "construction or demolition projects are generally not considered to be part of the regular or recurrent work" of an alleged contractor, but "routine maintenance is generally considered" to qualify.[23] And given the frequency, the work performed by Trimac "certainly appears to be more akin to routine maintenance."[24]

Tellingly, this Court reaffirmed *Fireman's Fund*'s simple "contractor" view in 2011,[25] *after Cain*, on which the Court of Appeals relied. In *Doctors' Associates*, this Court recognized that "[a] contractor that never performs a particular job with its own employees can still come within KRS

---

[20] *Id.*

[21] *Id.*

[22] *Forbes v. Dixon Elec., Inc.*, 332 S.W.3d 733, 738 (Ky. App. 2010).

[23] *Miller v. Kentucky Power Co.*, 683 S.W.3d 669, 676–77 (Ky. App. 2023).

[24] *Id.*

[25] *Doctors' Assocs., Inc. v. Uninsured Employers' Fund*, 364 S.W.3d 68 (Ky. 2011).

342.610(2)(b)."[26] And this Court denied discretionary review when the Court of Appeals rejected interpreting *Cain* as creating a "two-part test."[27]

But here the Court of Appeals *did* create a new test because it held the use of employees was dispositive. The lower court's analysis is seemingly inconsistent with *Fireman's Fund*, *Cabrera*, and *Cain* because it does not leave open the possibility that a business is still a contractor even though it has never used its own employees to perform the contracted work. In other words, using employees is no longer a "factor"—the Court of Appeals outlined a two-prong test, which was explicitly rejected in *Forbes*.[28]

The Court of Appeals' undue reliance on *Cain* as dispositive judicially amends KRS 341.620(2)(b), which violates Kentucky's separation of powers.[29]

---

[26] *Id.* at 92.

[27] *Forbes*, 332 S.W.3d at 738 ("[N]amely, the work must be: 1) customary to the business or repeated with a degree of regularity; and 2) of a kind normally performed or expected to be performed by employees."); *see also Miller*, 683 S.W.3d at 677.

[28] *See also Haysley v. Circle K. Stores, Inc.*, 2021 WL 6496551 (W.D. Ky. Oct. 29, 2021) (rejecting contractor immunity due to application of two-prong test); *Haysley v. Circle K. Stores, Inc.*, 2022 WL 4636128 (W.D. Ky. Sept. 30, 2022) (reversing prior decision and granting immunity because "having reviewed Defendants' cited case law, the Court agrees and thus vacates its earlier holding: the fact that work is performed by subcontractors is not by itself significant if the work otherwise qualifies as 'regular and recurrent'").

[29] As this Court is well aware, Kentucky's separation of powers is "among the most powerful in the country." *Appalachian Racing, LLC v. Commonwealth*, 504 S.W.3d 1, 4 (Ky. 2016); *see also Sibert v. Garrett*, 246 S.W. 455, 458 (Ky. 1922) ("Perhaps no state forming a part of the national government of the United States has a Constitution whose language more emphatically separates and perpetuates what might be termed the American tripod form of government than does our Constitution.").

Inserting statutory language "is a power reserved to the legislative branch and the power is preserved and protected by the separation of powers doctrine."[30] And "liberal construction does not authorize judicial disregard of clear statutory language," especially when that language "do[es] justice to both the employer and employee."[31]

In injecting language into the statute and misreading *Cain*, the Court of Appeals provided no guidance on what would constitute a "similarly situated business." Minova is in a small group of resin-capsule manufacturers, has manufacturing plants on five continents, and operates in more than 25 countries.[32] It is unclear what business would be similarly situated to Minova, which creates confusion and uncertainty for the bench and bar.[33] And uncertain immunity, or immunity that purports to be certain but results in varying applications by courts, is little better than no immunity.[34]

This Court has never altered or overruled *Fireman's Fund* or *Cabrera*—if anything, this Court should retreat from *Cain*'s reliance on

---

[30] *Hardin v. Jefferson Cnty. Bd. of Educ.*, 558 S.W.3d 1, 8 (Ky. App. 2018).

[31] *Kindred Healthcare v. Harper*, 642 S.W.3d 672, 680 (Ky. 2022).

[32] https://www.minovaglobal.com/apac/about/

[33] Are all manufacturers receiving necessary materials for their products similarly situated to Minova? That seems too broad to be helpful. Does "similarly situated business" require a more narrow application, *i.e.* only resin capsule manufacturers? It's unclear.

[34] *See Com., Cab. for Health and Family Servs. v. Chauvin*, 316 S.W.3d 279, 290 (Ky. 2010) (Scott, J., concurring) (quoting *Upjohn Co. v. United States*, 449 U.S. 383, 393 (1981)).

Larson's treatise[35] and return to *Fireman's Fund*'s "soun[d] reasoning" because "it interprets the language of the existing statute."[36] That said, Minova satisfies *Cain*'s test. Limestone filler was necessary; and under the terms of Minova's transportation services agreement, Trimac was to "[s]afely unload, or *make available for unloading*, the Products."[37] Regardless of how often Minova employees may have unloaded the limestone filler, if ever, the agreement contemplates Minova employees potentially being involved.

The Court of Appeals should be reversed to maintain a degree of consistency in Kentucky law.

II. Minova is a "contractor" under case law involving deliveries or trucking.

Delivery cases "turn largely on common-sense considerations of whether the delivery activity was routine or extraordinary for this type of business."[38] Minova receiving, on average, more than one delivery of limestone filler every day, is plainly a "regular or recurrent" part of its business.[39]

---

[35] Relying on Larson's treatise is difficult. "[T]he statutory employment doctrine is state-specific, making declarations of universal rules impossible." 64 A.L.R. 7th Art. 2 *Workers' Compensation Act Immunity from Tort Liability of General Contractor or Owner Through Application of Statutory Employment Doctrine* (2021).

[36] *U.S. Fidelity & Guar. Co. v. Technical Minerals, Inc.*, 934 S.W.2d 266, 269 (Ky. 1996).

[37] Transportation Services Agreement, R. 989–1010, at p. 3 (emphasis added).

[38] Larson's *Workers' Compensation Law* § 70.06[8].

[39] Again, Trimac delivered 389 loads of limestone filler in 2017 and over 35 in January and February 2018.

Again, limestone filler is a key ingredient in Minova's resin-capsule manufacturing and Minova had an ongoing relationship with Trimac for transportation services. Common sense dictates that this was routine, regular, and recurrent activity for Minova, making it a contractor under Kentucky statutes.

Minova's contractor status is also analogous to other Kentucky delivery cases. In *Tom Ballard Co. v. Blevins*,[40] for example, a coal company contracted with a small trucking firm to haul coal to purchasers—it did not deliver the coal itself. After a driver was killed in an accident while delivering coal, the coal company was sued. The Court of Appeals held that the coal company was statutorily immune because it was not "unreasonable . . . to conclude that the hauling of coal to the customer was a part of the [coal company's] business," especially because the mining company would go "extinct" if they "could not get their product to market."[41]

Like the coal company, Minova contracted with a trucking firm for hauling services, the targeted material in the hauling services is critical to Minova's business function, and a driver was injured while delivering limestone filler. Minova is Jolly's statutory employer and is entitled to immunity.

In *Thornton v. Carmeuse Lime Sales Corp.*,[42] Carmeuse hired a trucking service to deliver its products. Thornton was injured during a delivery and filed suit against Carmeuse after recovering workers' compensation benefits

[40] 614 S.W.2d 247 (Ky. 1980).

[41] *Id.* at 249.

[42] 346 S.W.3d 297 (Ky. App. 2010).

from his primary employer. The Court of Appeals affirmed summary judgment in Carmeuse's favor because it held hauling product was a regular or recurrent part of Carmeuse's business. The same can be said for Minova—it contracted with Trimac to deliver materials and it was essential to Minova's business.

Finally, in *Waterbury v. Anheuser-Busch, Inc.*,[43] Anheuser-Busch contracted with Waterbury's employer to deliver CO_2 canisters for use at summer events to "dispense Anheuser-Busch beer from beer wagons at various outdoor events."[44] Waterbury was injured and sued Anheuser-Busch. The court granted summary judgment because "Kentucky courts have broadly interpreted what constitutes a regular or recurrent part of a person's business or trade." The court recognized that "Anheuser-Busch [was] in the business of selling beer," so the delivery of CO_2 canisters "used to dispense beer" was a regular or recurrent part of Anheuser-Busch's business of selling beer.[45]

Minova, like Anheuser-Busch, has contracted with a hauling service for a component necessary for the ultimate product it sells. Minova needs limestone filler to manufacture resin capsules like Anheuser-Busch needs CO_2 cartridges to dispense beer. And like Anheuser-Busch, Minova is entitled to statutory immunity.

---

[43] 2003 WL 1145470 (W.D. Ky. Feb. 24, 2003).

[44] *Id.* at *2.

[45] *Id.*

III. Public policy and the principles underlying Kentucky's Workers' Compensation Act support reversing the Court of Appeals.

Looking past the plain legal errors committed by the Court of Appeals, the court's opinion also violates public policy, establishing an unworkable analysis that will create inconsistent results. The Court of Appeals' opinion effectively rewrites the statutory "contractor" definition and renders it meaningless. If businesses want the immunity they're entitled to through the workers' compensation system, they're forced to hire employees. This makes little sense and ignores the General Assembly's plain intent in defining "contractors."

Moreover, as this Court has recognized, the workers' compensation statute is to be interpreted "broadly . . . to ensure that workers' compensation coverage is provided allowing injured workers to recover benefits quickly without having to show fault."[46] In other words, "contractor" should be interpreted broadly so that subcontractors like Jolly are able to recover the benefits to which they are entitled from multiple sources to protect against a business not having adequate workers' compensation coverage.

Yet Jolly argues for—and the Court of Appeals endorsed—a narrow reading of "contractor" to limit immunity. But this is anathema to workers'

---

[46] *Beaver v. Oakley*, 279 S.W.3d 527, 534 (Ky. 2009). Other states have interpreted their workers' compensation statutes liberally to ensure statutory employers is broadly defined. *See, e.g., Six L's Packing Co. v. W.C.A.B. (Williamson)*, 44 A.3d 1148, 1158–59 (Pa. 2012) ("[E]mploying principle of liberal construction in furtherance of the Act's remedial purposes" to find business was statutory employer).

compensation's underlying policy. It may make little difference for Jolly—he received his full benefits. But adopting the Court of Appeals' analysis cuts off workers' noses to spite their faces. Sure, under the Court of Appeals' opinion Jolly can proceed with his personal-injury lawsuit against Minova, but what will happen to the next subcontractor attempting to seek benefits from a Kentucky business? Will their benefits be delayed or even denied because they need to present evidence that the business was equipped to use its own employees for the work? That other similar businesses use their own employees?

Such a narrow interpretation of "contractor" is inconsistent with the purpose of up-the-ladder principles. Requiring an alleged "contractor" to be (or become) equipped to perform the work through its own employees in no way discourages them from subcontracting work to an irresponsible subcontractor. If anything, it *promotes* hiring an irresponsible subcontractor, avoiding workers' compensation benefits, and exercising traditional civil defenses.

The immunity at issue here and workers' benefits go hand in hand.[47] One cannot "assure that contractors and subcontractors provide workers' compensation coverage" for Kentucky's workforce without also ensuring that in exchange they receive immunity from suit.[48] This is the burden and . . . benefit" lying at the "heart of the trade-off built into any workers'

[47] *See Pennington*, 238 S.W.3d at 666 ("The cases emphasize that it is the potential liability for workers' compensation benefits that relieves the contractor of tort liability.").

[48] *Cain*, 236 S.W.3d at 587.

compensation system."[49] The Court of Appeals' opinion throws this system's balance off kilter—contractors like Minova receive a greater burden with a decrease in lawsuit protection and workers receive a diminished guarantee that they will receive benefits. Minova's remedy according to the Court of Appeals? Research other resin-capsule manufacturers (many of whom are international operating under presumably different workers' compensation schemes, if any), obtain federal licensing, and hire employees to haul a key material for their product. In other words—don't be a contractor; be an employer instead.[50]

This Court should not hold that a subcontractor hauling 389 loads of critical material a year for a Kentucky business is not a "regular or recurrent" part of that business's operation. As Justice Palmore famously said, "[w]hen

---

[49] *Black* 835 F.3d at 586.

[50] This Court has previously recognized such a dilemma. *Technical Materials*, 934 S.W.2d at 269:

> "[I]t is proper to consider whether the Legislature intended to adversely affect existing business enterprises. As a practical matter, if the statute here were construed to allow a common law civil action against an employer who obtains a temporary employee through a temporary services company, no employer in his right mind would hire such an employee. The effect of this would be to destroy the temporary employee industry.
>
> Historically, a major reason employers were willing to provide Workers' Compensation benefits was to be free of common law civil liability. By the argument of plaintiffs in this case, such would be totally frustrated and the plaintiff would have the best of both worlds, Workers' Compensation benefits and a common law right of action. By contrast, the defendant/employer would have the worst of both worlds and this could not have been legislative intent."

all is said and done, common sense must not be a stranger in the house of the law."[51] The trial court's summary judgment in Minova's favor is consistent with decades of law and policy. More importantly, it perpetuates the balanced, compromised view at the core of Kentucky's workers' compensation system.

CONCLUSION

Jolly's employer was consistently involved in Minova's business operation. After being injured at work, Jolly properly received benefits from his employer. Minova should be immune from suit outside the workers' compensation system. To hold otherwise is to redo decades of state and federal decisions outlining contractor immunity in Kentucky workers' compensation.

Thus, the Court should reverse the Court of Appeals and reaffirm the longtime protection from lawsuit that contractors like Minova have received in exchange for workers' guaranteed access to benefits. The Court of Appeals' enhanced analytical framework sows unnecessary confusion and uncertainty.

JOSEPH (JOEY) A. WRIGHT
THOMPSON MILLER & SIMPSON PLC
734 West Main Street, Suite 400
Louisville, Kentucky 40202
Counsel for Amicus Curiae
Kentucky Defense Counsel, Inc.

[51] *Cantrell v. Ky. Unemployment Ins. Comm'n*, 450 S.W.2d 235, 237 (Ky. 1970).