February 1970

Workmen's Compensation–Retroactivity of Pneumoconiosis Amendment

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exercise of the police power of this state\textsuperscript{23} and, therefore, was void as an invasion of property rights without due process of law.\textsuperscript{24} The court also held that the act was void because it violated article VI, section 30 of the constitution of West Virginia, which provides that no legislative act “shall embrace more than one object and that shall be expressed in the title.”\textsuperscript{25}

Absent the non-signer provision, the West Virginia Fair Trade Act affords no effective means of compelling price maintenance. Since the court's decision in 1958, numerous retail discount stores have emerged in West Virginia. By bringing the product to the consumer at a lower price than available elsewhere, these stores have prospered without trading stamps, games, delivery, and in most cases sales on credit. The growth and volume of business of these discount stores is ample evidence of the consumer's desire to buy the product at the lowest possible price. This desire can only be fulfilled by effective competition absent resale price restrictions.

*James Michael Brown*

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**WORKMEN'S COMPENSATION—
RETROACTIVITY OF PNEUMOCONIOSIS AMENDMENT**

Amid a flurry of marches on the state capitol by protesting miners, the West Virginia Legislature on March 8, 1969, enacted an amendment to the Workmen's Compensation Act. The major substantive change was the recognition of occupational pneumoconiosis\textsuperscript{4}

\textsuperscript{24}Id. at 500, 103 S.E.2d at 315.
\textsuperscript{25}Id. at 501-04, 103 S.E.2d at 316-18.

Pneumoconiosis is a disease of the lungs caused by the inhalation of minute particles of dust over a period of time which has produced pinhead or other nodulation or pathological or abnormal physiological change generally accepted by recognized specialists in the field of respiratory diseases as supporting a diagnosis of pneumoconiosis and which can be identified by X rays or other medical evidence and a pneumoconiosis shall be considered to be an occupational pneumoconiosis when the pneumoconiosis results from causes and conditions arising out of and in the course of the employment. The term “occupa-
as a compensable "injury by accident".\textsuperscript{2} Since the amendment contains no clear and imperative language expressing the Legislature's intention to make its provisions retroactive, uncertainty exists as to the rights of those workers suffering from pneumoconiosis who retired prior to the effective date of the enactment. A summary of West Virginia case law on the issue of the retroactivity of compensation statutes supports a determination that the "occupational pneumoconiosis" amendment is prospective rather than retroactive in effect.

Compensation acts, although in derogation of common law, are remedial in nature and should be liberally construed.\textsuperscript{3} However, old and settled principles of law, such as the presumption against making a statute retroactive in force, cannot be abandoned.\textsuperscript{4} The general principal of law is that statutes are to be construed retrospectively only where the legislature has expressed such an intention in clear and unambiguous terms or where such intent is necessarily implied from the language of the statute.\textsuperscript{5} When a statute threatens to impair vested contractual rights of parties, the presumption against retroactivity is entitled to special weight;\textsuperscript{6} and as was held in the case of Hardin v. Workmen's Compensation Appeal Board,\textsuperscript{7} the relation between employer and employee with respect to workmen's compensation is contractual.

Thus, the rights of the contracting parties under a voluntary statute such as the Workmen's Compensation Act become an inte-
In general, part of the contract and are generally fixed and not subject to modification by subsequent statutory amendments. At best, the right of the legislature to impair or alter vested contractual rights is justifiable only where the exercise of the police power of the state calls for such impairment in the public interest. Following this principle, the West Virginia Supreme Court of Appeals reasoned in Lester v. State Compensation Commissioner that the statute in effect at the time of an employee's injury denying recovery of any unpaid compensation by the worker's dependents upon his death was applicable to his dependents' claim for compensation, rather than an amended statute in effect at the time of his death which would have permitted recovery of the unpaid compensation by the dependents.

However, the strong presumption against applying statutes retrospectively is relaxed in cases where new legislation affects procedural rather than substantive rights. Thus, in McShan v. Heberlin the mere fact that the claimant's injury occurred prior to the act of the Legislature creating the Workmen's Compensation Appeal Board did not deprive the Board of jurisdiction of the claim. The court ruled that where a new statute, on its face, deals with procedure only, it applies to all actions—accrued, pending and future.

This presumption against the retroactivity of workmen's compensation statutes was adhered to without deviation in West Virginia until 1953, when the Supreme Court of Appeals decided the case of Webb v. State Compensation Commissioner. In that case, an employee was awarded benefits in 1947 for silicosis in the third stage. Before an award for third stage silicosis could be made under the provisions of the 1945 statute then in effect, the silicosis had to be accompanied by active tuberculosis. After the worker's death in 1951, an autopsy determined that he had not suffered from tuberculosis. The widow, however, based her claim for compensation on a 1949 amendment which did not require the presence of

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10Lester v. State Compensation Commissioner, 123 W. Va. 516, 521, 16 S.E.2d 920, 923 (1941).
11123 W. Va. 516, 16 S.E.2d 920 (1941).
12123 W. Va. 516, 16 S.E.2d 920, 923 (1941).
14138 W. Va. 21, 76 S.E.2d 248 (1933).
tuberculosis for a finding of silicosis in the third stage. On appeal, the court allowed recovery by the claimant. The majority decided that since the 1949 amendment affected none of the parties' accrued or vested rights, the Legislature could properly apply the statute retrospectively. The court found it necessary to go to some lengths, however, to find language expressing a legislative intent to apply the statute retrospectively. A provision in the amendment to the effect that if "the commissioner has determined at the time of the original award that he [the employee] was suffering from silicosis in the third stage" then his dependents were eligible to receive benefits, was thought by the court to be indicative of the Legislature's intention to give the amendment retroactive effect.

In a strong dissent, Judge Browning reasoned that an amendment making certain persons eligible for compensation benefits who were previously ineligible necessarily affected the substantive rights of the parties to the compensation agreement. In addition, he argued that there was an absence of the "clear, strong and imperative words" required by the court in State ex rel. Conley v. Commissioner to show the legislative intent necessary to give a statute retroactive force.

The court again had to decide which of the two statutes was applicable in Peak v. State Compensation Commissioner. There, the employee in 1947 was awarded compensation for second stage silicosis. His last exposure to the hazards of silicosis occurred prior to the enactment of the 1949 amendment which eliminated the requirement of a finding of tuberculosis before an awarding of benefits for third stage. An autopsy, however, revealed that he was suffering from advanced silicosis in the third stage, but there was no finding of active tuberculosis. Although at the time the employer and employee entered into the compensation agreement it was necessary for active tuberculosis to accompany silicosis in order to allow a recovery for third stage silicosis, the court, purporting to follow the reasoning of the majority in Webb, permitted the widow to recover benefits. Since Webb held that the finding of disability by the Commissioner at the time of the original award

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17 Id. at 23, 76 S.E.2d at 249 (emphasis added).
18 Id. at 25, 76 S.E.2d at 251.
was the binding determination under the provisions of the 1949 amendment, the dissent accurately pointed out that the decision in Webb actually barred recovery in the instant case in that the Commissioner had determined at the time of the original award that the employee was suffering from second stage silicosis.

The confusion engendered by the Webb and Peak decisions was resolved in Terry v. State Compensation Commissioner\(^9\) in which the court overlooked the harsh economic realities to be wrought by a proper application of settled legal principles. In Terry, an employee was awarded compensation for second stage silicosis in 1954. At his death in 1956, it was determined that he was suffering from silicosis in the third stage. Under the provisions of the 1949 Act in effect at the time of the worker's last exposure to the hazards of silicosis, the Commissioner was required to determine, at the time of the original award, that the employee was suffering from third stage silicosis before his dependents could receive benefits. The widow based her right to recover compensation on a 1961 amendment which eliminated the requirement of a determination by the Commissioner, at the time of the original award, of silicosis in the third stage as a prerequisite for an award to the dependents. In denying recovery by the claimant, the court held that the 1949 statute was clear and unambiguous in its terms and meanings; that the Commissioner had not determined at the time of the original award that the employee was suffering from third stage silicosis; that such determination was a condition precedent to recovery by the dependents; that the 1961 amendment would not be given retroactive effect; and that Webb and Peak decisions to the extent they were inconsistent with the decision in that case, were expressly disapproved.

In the recent case of Maxwell v. State Compensation Commissioner,\(^\text{10}\) the West Virginia Supreme Court of Appeals applied a statute in effect at the time of an employee's termination of employment rather than retrospectively applying the statute in effect at the time of the employee's death. There, the worker terminated his employment in 1960 as a result of ill health. He did not file a claim for compensation during his lifetime, but an autopsy determined that he died of silicosis in the third stage. Under the pro-

\(^\text{10}\)150 W. Va. 123, 144 S.E.2d 493 (1965).