

1949

Surgical Supply Center, Inc., Professional Pharmacy, Inc. v. The Industrial Commission of Utah, The Department of Unemployment of the Section of the Industrial Commission of Utah, et al. : Brief of Plaintiffs

Utah Supreme Court

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In the Supreme Court of the
State of Utah

SURGICAL SUPPLY CENTER, INC.
a corporation; PROFESSIONAL
PHARMACY, INC. a corporation,
et al.

Plaintiffs and Petitioners,

vs.

THE INDUSTRIAL COMMISSION
OF UTAH, THE DEPARTMENT OF
UNEMPLOYMENT OF THE
SECTION OF THE INDUSTRIAL
COMMISSION OF UTAH, et al.

Defendants.

Case No.
7390

PLAINTIFFS' BRIEF

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STATEMENT OF FACTS

From December 30, 1938, to January 3, 1944, plaintiff, James F. Robinson, was engaged in the pharmacy business as a sole proprietorship under the name of Professional Pharmacy. About November 23, 1942, Robinson purchased from James W. Reeve, a surgical supply business which he then operated as a sole proprietorship under the name of Surgical Supply Center. The pharmacy business and the surgical supply business retained their separate identities and locations. Robinson continued as manager of the pharmacy, and plaintiff, E. Wilford

Brown, an old employee at the surgical supply remained as manager of that business. Being war years and the governmental agencies were anxious for immediate delivery of hospital and surgical supplies, and capable employees being difficult to obtain, Robinson was under the necessity of devoting a considerable part of his time to the surgical supply division of his business; and plaintiff, Angus E. Ossman, was employed as auditor in charge of the finances of both businesses. The nature of the businesses were so distinct that it would have been impossible to successfully combine them. They were operated separately, each with its own separate personnel, trade names, accounts, and locations; except that Robinson and Ossman devoted variable time to each business. To avoid misunderstanding between his two principal employees and simplify the keeping of books as to the pay of Robinson and Ossman, a single partnership was organized on January 3, 1944, consisting of Robinson, Brown and Ossman, which took over both businesses. However, separate accounts were maintained for each business, and the experience rating is based upon the actual experience relation of employees to each business.

On October 1, 1947, for practical reasons which had no relationship to or connection with the matter of unemployment compensation or taxes therefore, two corporations were formed,—one, Surgical Supply Center, Inc. taking over the surgical supply business and its assets, and the other, Professional Pharmacy, Inc., taking over the pharmacy business and its assets. This involved no difficulty as the businesses, books, records, charges and accounts had always been kept separate and distinct. Since that time the employees, which under the partnership had

been employed by each business, has continued so employed in the same business and positions under the two corporations. The two corporations were and are owned by the partnership, except five shares, one each by Robinson, Brown and Ossman, who had been and are the three partners, and one by each of two qualifying stockholders.

The experience rating of each of the businesses was such that a reduced rate of contribution, to wit, .07%, was in order. On May 14, 1948, defendant, Utah Department of Employment Security, notified the corporate plaintiffs that beginning as of October 1, 1947, their contribution rate would be 2.7%, the rate fixed by statute for an employer with no experience rating. (That is the highest rate allowed by statute.) Upon appeal, the Appeals Referee upheld the rate fixed by the department. The gist of the decision of the Referee is stated in two paragraphs of his decision as follows:

“If it could be found that there existed two separate partnerships which each transferred its assets to a separate corporation and then discontinued operations, then the new corporations would clearly be entitled to inherited status for the purpose of determination of contribution rate in this case. However, the facts clearly show that the new corporations that came into being on October 1, 1948 had a common predecessor, the single partnership which owned and operated the two separate businesses, and neither of the successors acquired all or substantially all of the assets of this predecessor as required by the law to qualify for inherited status. Appellants urge the contention that the corporations are successors to two individual businesses which were maintained separate and distinct by

the partnership but this is not sufficient inasmuch as the businesses were merely separate units of the single legal entity and were not separate entities liable under the law in their own right but were jointly liable as a partnership.”

The Board of Review affirmed, and this action brings the matter here for determination.

STATEMENT OF ERRORS OF THE DEPARTMENT UPON WHICH PLAINTIFF RELIES AND ASSIGN FOR REVERSAL AND VACATION OF ORDER WITH RESPECT TO RATES OF CONTRIBUTION TO BE PAID BY PLAINTIFF CORPORATIONS.

1. The department erred in its interpretation and application of the law in holding corporate plaintiffs were not “qualified employers” for determining rates of contribution.

2. The department erred in holding the corporate plaintiffs had not acquired substantially all of the assets of the employer, for the purpose of becoming a “qualified employer” under the Act.

We contend that under the factual situation as it exists in this case, and as shown and conceded by the record, the two plaintiff corporations are successors to two individual businesses, which were and always had been maintained separate and distinct, although they had both been owned and operated by the same partnership. In other words we maintain: That for the purposes of the application of Chapter 56, Laws of Utah, 1947, and particularly of Section 42-2a-7- thereof, under subdivision C of that Section, the sale and transfer of the Surgical

Supply business to Surgical Supply, Inc., and the sale and transfer of the Professional Pharmacy business to the Professional Pharmacy, Inc., in each case was in effect the sale of all or substantially all of the assets of another employer, who, upon such acquisition, discontinued operation; that the new employers were thereupon entitled to an "inherited status" as employers, and were "qualified employers" for the purpose of determining contribution liability, and entitled to reduced rates.

Section 42-2a-7, referred to as far as material to this point, by subhead C of subdivision (c) provides that a "qualified employer" (one entitled to reduced rates, based upon experience rating) is one who was an employer for thirteen consecutive calendar quarters, and for the three years had filed all reports and paid all contributions required. It then adds:

"If an employer has acquired all or substantially all of the assets of another employer and such other employer had discontinued operations upon such acquisition, the period of liability of both employers during such period shall be jointly considered for all purposes of this section. (That is for the purposes of classification and determining contribution rates.)

The Department of Unemployment Security and the Appeals Referee held that plaintiffs, Surgical Supply Center, Inc., and Professional Pharmacy, Inc., were both new employers, and since Surgical Supply, Inc., had acquired only the surgical supply business, operated at 331 South Main Street, and the Professional Pharmacy, Inc. had acquired only the pharmacy business operated in the

Judge Building, neither of the new employers had acquired all the assets of the partnership, and were therefore not entitled to the benefit of the experience rating of the partnership.

STATEMENT AND ARGUMENT ON POINTS OF ERRORS.

1-2. Under proper construction of the law, plaintiff corporations are qualified employers.

We contend such holding is in error, and is a misconstruction, misinterpretation and misapplication, of the law. We maintain that the true and correct interpretation and construction of law is: that if an employer acquire substantially all of the assets of the *business* which he acquires, and the other employer discontinues operation in that field or line of business, the period of liability of both employers shall be jointly considered. Essentially the question is whether the statute is to have a critical, super technical interpretation, or an interpretation in line with the purposes, plan, and general purport of the Act. If the words of the statute, without regard to purpose and practical application, is to be the measure, then it is not necessary that the acquiring employer obtain, take over, or acquire the *business*, trade, organization, or *enterprise* of the former employer. The statute says: "*acquired substantially all of the assets of another employer;*" not of the enterprise or business. There are many things that are assets of a business, that are not assets of the owner apart from the business, like "good will" which is inherent in the business and cannot be sold apart from it. *Utah Idaho Sugar Co., vs. Salt Lake County*, 60 Utah, 491, 512,

210 Pac. 106, 27 A.L.R. 847; 24 Am. Jur. 804, 5; Anno. An.Cas. 1914 B, 874. There are many things that are assets of the owner that have no connection with the business. Thus stockholders statutory liability to a bank is not a bank asset of the bank and cannot be sold under an order for a sale of assets. *Andrews vs. Bank of Swea City*, 242 N.W. 62, 65; *Deareso vs. Mobley*, 38 Ga. App. 313, 154 S.E. 915, 920; *Private letters Re Ryans Estate* 188 N.Y.S. 387; a homestead right; an exemption from execution, and many others.

The Supreme Court of Connecticut in *Harris vs. Egan*, 135 Conn. 102, 60 A (2) 922, 4 A.L.R. (2) 717, held that organization, trade, business, and assets were separate and distinct things, and one did not include the other. Thus most statutes read "acquires the organization, trade, business, or substantially all of the assets of another employer. California Statutes 1937, pp 2053, 4, paragraphs 9 (a) and (b); Code of Iowa 1946, Section 96.19; so also Massachusetts, Washington, Colorado, Tennessee and many others.

Methinks defendants will say that "employer" means the business and not the owner. With that we have no quarrel, but that calls for a liberal construction to fit the sense and purpose of the statute, and not the words. So to, "word interpretation" would provide trouble with "employer," "operations" and "jointly considered."

Let us view the sentence in question in the light of the purpose, plan, and purport of the Act; in the light of the things and object sought to be accomplished by it; what it sought to allow and what it sought to prevent. Speaking of the meaning of terms and sentences in our social legislation which enters new fields under new con-

cepts, the Supreme Court of the United States, speaking through Justice Rutledge in *National Labor Relations Board vs. Hearst Publications Inc.*, 322 U. S. 111, 64 Sup. Ct. 851, 88 L.Ed. 1170, says they are to be interpreted not through legal classifications and common law standards 'but with regard to the history, context, and purpose of the Act, and *to the economic facts of the particular relationship.*' The United States Court of Appeals, D. C. in *Grace vs. Mcgruder*, 148 Fed. 121, 679, says the social security act is primarily remedial and "*requires construction which will give effect to the legislative intention in the light of the mischief to be corrected, and end to be obtained, and the taxing phase is secondary and incidental.*" The primary purpose of construing a statute, the purpose to which others must yield, is to arrive at the legislative intent and render that intent effective. Such intent must be deduced from the entire statute and every part of it taken and construed together. One portion of an act is often designed to extend, qualify, or limit or give meaning to another provision. 2 Sutherland Stat. Const. Section 368. Each part or section should be construed in connection with every other part or section. *Inter-State Water Co. v City of Danville*, 379 Ill. 41, 39 N.E. (2) Not only the language but the evils to be limited and the objects to be obtained must be considered. If it admits of two constructions, one of which renders it reasonable and salutary in the light of the objects to be achieved and the other renders it unreasonable or mischievous, if not absurd, the latter should be avoided. *Inter-State Water v Danville supra*; *Burke v Ind. Com.* 368 Ill. 544, 15 N. E. (2) 305. So, a situation within the object spirit and meaning of a statute is regarded within the statute; a situation within the letter is without the statute unless

it is also within the intent. *Burke v Ind. Com.* supra; U.S. Ind. Alcohol v Nudelman, 375 Ill. 342, 31 N.E. (2) 594.

Considering the statute in question from this position we have here an enactment which manifests a legislative intent that technical legal definitions are not applicable to cases under this statute. Thus the word "employing unit" expresses legislative intent to deal with realities by taking notice of economic and business considerations. "Employer" is defined in terms of an "employing unit", both of which with "employee", "wages", "surplus", and many others differ from the usually accepted connotations and common law concepts of these terms. Such terms and many others are not used as word of restricted meanings, and have no precise or rigid definitions, meaning or use. The lexicon of the Act is in general descriptions, broad terms, elastic meanings, uses and applications, evidencing a legislative intent to brush aside or leap over legal barriers, and secure an interpretation and application of the Act *based upon economic and business sense*, and not upon rigid, common law or tax rule construction. See *Unemployment Compensation Commission vs. Jefferson Life* 215 N.C. 479; 2 S.E. (2) 584; *Lindley vs. Murphy*, 387 Ill. 506, 56 N.E. (2) 832; *Peasley vs. Murphy*, 386 Ill. 258, 53 N.E. (2) 944; 143 A.L.R. 414; *Godsol vs. Unemployment Compensation Commission*, 302 Mich. 652, 5 N.W. (2) 519, 142 A.L.R. 910. This Court has in effect taken the same view in a number of cases. See opinions of Justice Wolfe in *National Tunnel and Mines vs. Industrial Commission*, Utah, 102 Pac. (2) 508; of Chief Justice Pratt and of Justice McDonough in *Logan Cache Knitting vs. Industrial Commission* Ut., 102 Pac. (2) 495. Bear in mind that the Depart-

ment was required from the beginning to keep an experience rating on each business or employer; that the Act provided that employers or businesses, after three years of paying were entitled to have their rates adjusted, guided by the calls on the fund that had been made by employees of the employer because they were for a time unemployed. Since the Act was to stabilize employment, the employer was to be encouraged to maintain payroll stability, by reducing his rate of contributions as he kept his employees on the roll so they would not make calls on the fund.

Paragraph (5) of Section 42-2a-7 describes "Employer" under certain conditions so as to include several employing units and to include two or more corporate entities, if owned or controlled by the same interests. The Legislature here made it abundantly clear that one employer may have several enterprises or employing units and that all his enterprises are to be considered as one only for purposes of bringing the employees within the Act, but otherwise are to be considered as separate "employing units." Referring to "a form of reorganization affecting a change in legal identity or form" "of an employing unit reads: "(A) immediately after such change the employing ENTERPRISES of the predecessor employing UNIT" (caps ours) reorganizing that enterprises or units which economically or in reality constitute separate employing units shall be so considered, and enterprises or units which economically or in reality constitute but a single business shall be deemed a single business, familiar rules of corporation law, partnership law, and the law of master and servant to the contrary notwithstanding. The case of *Karlson vs. Murphy-Commissioner*, 383 Ill. 436, 56 N.E. (2) 839, a brokerage business had passed through

seven different partnerships. The Court on p. 442 of the Illinois report says: "If each successive partnership be considered as a separate and independent employer, plaintiffs are, of course, not entitled to the refunds awarded them. If on the other hand, the terms "employer" and "employing unit" employed in the statute, are construed in an economic rather than in a technical legal sense, they are entitled to the relief afforded them." After a rather lengthy discussion of the terms the court goes on: "This group of seven partnerships transacted business, and for all practical purposes, so far as the public, the State, creditors, customers, and its employees were concerned, was the same business unit." Again the court says: "The affiliation clause, the successor clauses, and the inherited rating experience clause, fortify our conclusion that the words "employing unit" are used in an economic and business sense. There clauses deal with matters of substance rather than form. * * * * * manifestly the General Assembly did not intend the meaning of the words "employing unit" to be dependent upon the legal form of the economic or business unit for whom the employee renders service." and holds that the seven successive partnerships are to be considered and treated as one.

Meyer vs. Mich. Unemployment Comp. Com. 311 Mich. 440, 18 N.W. (2) 886, was a case where partnership succeeded to the business of Meyer, who became one of the partners. The commission held this to be a new employer. The court on page 887 of the Reporter says: "Contribution by an employer is required for the purpose of compensating for losses to the employees by reason of unemployment. The rate of such contribution is, within

limits, made to depend on the history of the *enterprise* for unemployment which history is called the experience record. The rate thus determined is called the experience index, that is the rate indicated by experience as being necessary. The experience index of any particular *enterprise* is to be computed as provided in Section 18 (c) of the Act.” After referring with approval to *Karlson vs. Murphy*, *supra*, where six successive partnerships were treated as one employer, the court says: “We consider the section in question should be construed with reference to the words as used in their economic sense rather than as strict legal phraseology.”

“The words in question “that employing unit” refers to unity of enterprise and not to unity of ownership or management. It is the matter of employment of the same enterprise.” The court then concludes that in consideration of the whole act the partnership was entitled the benefits of position of the predecessor in determining what it was to pay. (*Italics added*)

Certainly in an economic sense, in a business sense, in a sense of the practical ways of practical men, the sentence under consideration in this action would be thought and held to mean that when a person buys a business from another with substantially all the assets of the business he has taken over, the seller quitting such business or operation, the buyer is entitled to the benefit of the experience rating established by the business he takes over. Some businesses are periodic and fluctuating in the number of employees seasonally or otherwise; others keep an almost constant roll. This is largely due to the nature of the business. The spirit and purpose of the act is to make each business, trade, or undertaking which has employees,

bear the burden of the unemployment that results at times from its operation. It is not contemplated that one business which keeps a constant payroll shall carry the burdens for one which fluctuates. That is the purpose of Section 42-2A-7 providing for rate changes based on experience.

Let us take an example: "A" is an employer. He operates a hotel in Logan; a fair size grocery store in Salt Lake; a lumber yard in Salina; and a sheep ranch at Vernal. At each place he qualifies as an employer, with an excellent experience rating at each establishment. He sells the lumber yard at Salina to one operating a yard at Richfield which also has a good rating. Under the contention of the department before the new owner could get the benefit of the experience rating he must needs buy the hotel, the grocery store and the sheep ranch. Is that sense or sound in law, or in economics, or business, or practical thinking in practical life? Yea, they go further: Their position must be that if a man owns and operates a business, being an employer, and then incorporates himself as a corporation sole, to go on with the same business, his experience rating of .07% must be raised to 2.7% for three years. And that under a law designed to give each business establishment the lowest possible rate based upon his payroll turnover. Alas, poor Yorick, I knew him well. P. H. Vartanian, the annotator, on page 724 of 4 A.L.R. (2), thus summarizes the transfer section of Social Security Acts says: "The purpose of such provisions was to place the purchaser of a business conducted by one who was an employer under the law in the shoes of the seller of the business, so that the purchaser would, in effect, be the same employer as the seller had theretofore, *and would be entitled to any benefits accruing to the seller at the time*

the sale was made, and liable for any payments thereafter for which the seller would have been liable had the seller continued to operate the business; and that in such case the purchaser in effect became the employer in the place and stead of the former employer.” (Italics ours)

The Connecticut Court, in *Harris vs. Egan*, 135 Conn. 102, 60 A (2) 922, 4 A.L.R. (2) 717, says: “The theory obviously is that the business is to be treated as a single continuing employment,” and again they say:

“In applying the statute, a prime question in determining whether substantially all of the assets, the organization or the trade or business was taken over is: Did the acquisition result in a substantial continuation of the same or a like business.”

In the instant case it resulted in a perfect, complete continuation of exactly the same business without any changes in control, ownership, accounts, keeping of books, personnel, line of stock, obligations or anything except the technical legal name of the employer.

As to what constitutes substantially all of the stock, or property or assets, is a matter for the court to construe and determine. In *re: Temtor Corn vs. Fruit Products Co.* 299 Fed. 326, 31; *U.S. vs. Whyel* 10 Fed. (2) 260. Rules or guides to determine the construction or application of the phrase are indicated in the *Temtor* case at pages 328, 9; *Lindley vs. Murphy* 387 Ill. 506, 56 N.E. (2) 832, 4. The term “substantially all” is elastic and must be construed with relationship to its purpose. *Loglici vs. Liquor Commission* 123 Conn. 31, 192 A. 260, 2. The meaning of this statute must be determined from its purpose. The taxing element is secondary and inciden-

tal. Natl. Rel. Bd. vs. Hearst 332 U.S. 111, 64 Sup. Ct. 851, 88 L.ed 1170; Grace vs. McGruder Supra; Cohn vs. District Unemployment Comp. Bd. 167 Fed. (2) 883.

Further reasons why corporate plaintiffs should be held to be Qualified Employers.

Our next point is that the plaintiff corporations are not new employers; that they do not come within the term of "an employer who acquired the assets of another employer." They are in truth, in effect, and within the spirit and purpose of the statute the *same employer*, having merely affected a change in legal identity or form. The partnership owns all of the outstanding capital stock of the corporations except the qualifying shares. No new parties can come in except by buying out the interest of one of the others, the same as in the partnership. In fact the partnership just changed the legal identity or name under which the two employing units are operated. Such change is not, under the statute, considered a change in employer, or a transfer from one employer to another. And the statute expressly provides that "effective as of the date of such change in legal identity or form, the commission *shall for the purposes of rate determination*, transfer to the successor the payroll record and experience rating record of the predecessor," and the contribution rate shall be determined from the experience record. Paragraph 5 of Section 42-2A-7 Laws of Utah, 1947.

We have no doubt the department will say that we do not come within this paragraph, and so we present an analysis of the section. As far as material here it reads:

"For the purpose of this subsection two or more employing units which are parties to ***** a form of reorganization effecting a change in legal

identity or form shall be deemed to be a single employing unit if (A) immediately after such change the employing enterprises of the predecessor employing unit or units are continued solely through a single employing unit as successor thereto, and (B) immediately after such change such successor is owned or controlled by substantially the same interests as the predecessor employing unit or units.”

The cases indicate that the requirements of such a provision is met by one employing unit changing its form or legal identity into another form or legal identity, by reorganizing itself if the reorganized unit meets the requirements of (A) and (B).

In *Maine Unemployment Comp. Com. vs. Androscoggin* 137 Me. 154, 16 A (2), 252 the court quotes a pertinent statement from *Chicago, M. & S. P. RR Co. vs. Minneapolis C. & C. Assn.*, 247 U.S. 490, 501, 38 S. Ct. 553, page 557, 62 L. Ed 1229, as follows: “In such a case the courts will not permit themselves to be blinded or deceived by the mere forms of law but, regardless of fictions, will deal with the substance of the transaction involved as if the corporate agency did not exist and as the justice of the case may require.”

In *Unemp. Comp. Com. vs. City Ice and Coal*, 216 N.C. 6, 3 S.E. (2) 290, the court says on page 292: “It regards corporate organizations objectively and realistically, unencumbered by the fictions of corporate identity, and thus brushing aside forms, deals with substance.” *Godsol vs. Mich. Unemp. Comp. Co.*, 302 Mich. 652, 5 N.W. (2) 519, 142 A.L.R. 910; *Meyer vs. Mich. Unemp. Comp. Comm.*, *supra*; *C. T. Investment Co. vs. Commission*, 88 Fed. (2) 582.

Here the surgical supply business, as an employing enterprise of the partnership is continued through a single employing unit as successor thereto; so also is the pharmacy business as an employing enterprise. So as to (B); immediately after such change (and continuing to the present moment) the very same unit, the partnership owns and controls the successor employing units. We call attention to the language of the section, "THE EMPLOYING ENTERPRISES OF THE EMPLOYING UNIT," clearly recognizing that an employing unit may have and operate several "employing enterprises," which is exactly what the partnership in this action did and is still doing—an employing enterprise in the Surgical Supply, and an employing enterprise in the Professional Pharmacy as contended for by us under subdivision (C) of part (2) of the section discussed supra. This section also shows that the legislature did not intend that employer should lose his experience rating by changing his legal form. After providing that an employing unit may change its legal identity or form as long as the new unit was owned or controlled by the same interest as before the change in form or legal identity the section provides: "Effective as of the date of such change in legal identity or form, the commission shall *for purposes of rate determination* transfer to the successor the payroll record and experience rating record of the predecessor."

It would seem that the Legislature intended that each separate enterprise of an employer is to be considered as a separate employing unit, except for the purpose of including within the protection of the Act, employees of such an enterprise which, for lack of numbers, would not be covered into the Act. In such case the several employ-

ing enterprises of one employer, are for the purpose of bringing all employees within the Act, considered as one. The reason universally assigned for this joining affiliate "employing units" for coverage purposes is to prevent shifting of employees or pay charges where there is unity of control. Re: Temtor Corn vs. Fruits Products, 299 Fed. 326, 9; Karlson vs. Murphy, *supra*; Lindley vs. Murphy, *supra*.

That the Legislature intended that the Surgical Supply business and the Pharmacy business, when taken over by the corporations, were to be treated as two separate units for contribution purposes is evidenced by the further fact that after the decision of the Department in cases such as these the Legislature in 1949, made the matter definite and beyond further question, when they declared, That when an employer who acquires substantially all, or a clearly segregable or identifiable part of another employer's enterprise, the past experience rating of the enterprise shall go to the benefit of acquiring employer. Laws of Utah 1949, Chapter 53, page 118. See *Arado vs. Keitel* 353 Mo. 223, 182 S.W. (2) 176; *Lindley vs. Murphy*, 387 Ill. 506, 56 N.E. (2) 832, 4; *Billet vs. Gordon*, 389 Ill. 454, 59 N.E. (2) 812; *Meyer vs. Mich. Unemployment Comp.* 311 Mich. 440 18 N.W. (2) 1886.

We summarize the points and discussion:

The corporate plaintiffs are "Qualified employers" because:

1. They acquired substantially all of the assets of the enterprise of "employing units" they acquired.
2. For the purposes of the section here involved, enterprises which are in their nature and operation separate are considered as separate businesses, or "employing as-

sets” for purposes of determining contribution rates upon transfer.

3. Since the corporate plaintiffs, the acquiring employers are owned and controlled by the partnership, the former employing unit, the department erred in law in holding that the corporate plaintiffs were new or acquiring employers in the matter of determining rates of contribution.

4. The organization of the corporate plaintiffs was, under Section 42-2a-7, just a change of identity or form under part (5) of the section and therefore entitled again to inherited status for determination of rate of contribution.

Under a proper construction and interpretation of the statute, the facts show that for the purpose of Section 42-2a-7-, the corporate plaintiffs are the same employer as the partnership and therefore is a “qualified Employer” and entitled to a reduced rate of contribution under their experience rating index.

We respectfully submitted that the Order of the Department of Unemployment Security and the Appeal Referee holding the plaintiff corporations were not Qualified Employers, and fixing their rate of contribution at 2.7% is against the law, is null and void and should be vacated, annulled and set aside.

Respectfully submitted
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Attorney for defendants.