

1980

# the State Insurance Fund v. Kenneth E. Renak and the Industrial Commission of Utah : Brief of Defendant Kenneth E. Renak

Utah Supreme Court

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

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THE STATE INSURANCE FUND, :

Plaintiff, :

vs. :

Case No. 16889

KENNETH E. RENAK and THE  
INDUSTRIAL COMMISSION OF UTAH, :

Defendants. :

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WRIT OF REVIEW FROM AN ORDER OF  
THE INDUSTRIAL COMMISSION OF UTAH

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BRIEF OF DEFENDANT KENNETH E. RENAK

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Commission

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OF THE STATE OF UTAH

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THE STATE INSURANCE FUND, :  
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 Plaintiff, :  
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BRIEF OF DEFENDANT KENNETH E. RENAK

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CASES CITED

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STATUTES CITED

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BRIEF OF DEFENDANT KENNETH E. RENAK

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STATEMENT OF THE NATURE OF THE CASE  
DISPOSITION BY THE INDUSTRIAL COMMISSION  
FACTS

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The Defendant Kenneth E. Renak agrees to the facts as stated in the brief of the Plaintiff.

RELIEF SOUGHT ON REVIEW

The Plaintiff's request that the Order of the Commission be reviewed and the matter remanded to the Commission with instructions to modify the Order to reflect an appropriate discount of the lump sum award to present value should not be granted.

ARGUMENT

POINT I

THE INDUSTRIAL COMMISSION DID NOT ABUSE ITS DISCRETION WHEN IT FAILED TO DISCOUNT THE AWARD BECAUSE A LUMP SUM PAYMENT WAS MADE.

Utah Code Annotated Sec. 35-1-79 (1953) authorizes the Industrial Commission to commute periodical benefits to one or more lump sum payments when they "deem" such action to be advisable. The Utah statute grants broad discretion to the Industrial Commission to determine what "special circumstances" justify a lump sum distribution. It should be noted that the statute specifically uses the word "deemed" instead of determined. The word determined in legal usage is used to imply a rational basis for making a determination. The term deemed is a much broader and more discretionary term in common contract language. The term deemed is often used to connote the existence of a fact which may be untrue. An example of this would be a contract provision which states that notice will be deemed to have been received when mailed regardless of whether the notice was received. The use of this term in the statute grants an unusually broad discretion in the Industrial Commission to make determinations in cases before it. In Retuena v. Industrial Commission 55 Utah 258, 185 P. 535, this court states at page 537 that a decision of the Industrial Commission to commute a benefit is absolute and not subject to review by the court. This case follows an interpretation of Utah Code Annotated Sec. 35-1-79 providing for broad authorization and discretion to be exercised by the Industrial Commission.

POINT 2

THE SUPREME COURT SHOULD REFUSE TO REVIEW THE  
AWARD OF THE INDUSTRIAL COMMISSION TO MR. RENAK  
SINCE THE COMMISSION HAS NOT DISREGARDED SOME  
POSITIVE PROVISION OF LAW IN MAKING OR DENYING  
THE AWARD.

Utah Code Annotated Sec. 35-1-84 sets forth proper grounds for the reversal of a decision of the Industrial Commission by the Supreme Court. That statute specifically provides that the court may set aside an award only on the following grounds:

1. That the Commission acted without or in excess of its powers, or

2. That the findings of fact do not support the award.

The Plaintiff in their Statement of Facts acknowledge that they agreed to settlement for the amount of the award so there is no question in regard to the award itself and this ground may be dismissed without further comment. The Plaintiff must therefore establish that the Industrial Commission acted without or in excess of its powers. In Utah Consolidated Mining v. Industrial Commission, 66 U. 173, 240 P. 440, this court has set forth the stand that an exercise without or in excess of the Commission's powers would mean that the Commission had "disregarded some positive provision of law in making or denying" the award, 66 U. 173 at 228. The Utah Statute does not mandate a discount. The State Legislature has never seen fit to provide statutory authority for a discount. This court has never mandated a discount in any of its prior decisions. Therefore it seems clear that no "positive

provision of law" has been disregarded or violated. This court in the Consolidated Mining case referred to above at page 226 held that there is a presumption that the actions of the Industrial Commission were proper. McVicar v. Industrial Commission, 56 U. 342, 191 P. 1089, states that it must "clearly appear that discretion" of the Industrial Commission has been abused. The Plaintiff has failed to establish a clear abuse of discretion.

#### CONCLUSION

The Utah Statute does not require the State Industrial Commission to discount awards to compensate for lump sum payments. Utah Code Annotated Section 35-1-79 grants the Industrial Commission extraordinarily broad authority and power to make decisions. The decision of the Industrial Commission in this matter has not exceeded its statutory authority.

Utah Code Annotated Section 35-1-84 as applied to this case states that the Plaintiff can prevail only by affirmatively establishing the Commission "acted without or in excess of its powers". The Plaintiff has failed to meet this burden of proof and its petition should be denied.

DATED this \_\_\_\_ day of June, 1980.

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ROBERT R. BROWN  
Attorney for Defendant Renak



CERTIFICATE OF MAILING

I hereby certify that two true and correct copies of the foregoing BRIEF were mailed, postage prepaid this \_\_\_\_\_ day of June, 1980 to the following:

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