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NO. 26-CI-003349

JEFFERSON CIRCUIT COURT
DIVISION SIX (6)
HON. JESSICA E. GREEN

BRANDI DAWN CARROLL, et al. PLAINTIFFS

v. **ORDER**

RUSSELL COLEMAN, etc. DEFENDANT

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The above-captioned suit is before the Court on the Motion to Dismiss filed by Defendant, Russell Coleman, in His Official Capacity as Attorney General of the Commonwealth of Kentucky ("Defendant"). After consideration of the record, including relevant memoranda and open-court arguments by counsel for the parties, after consideration of applicable case, statutory, and procedural law, and being otherwise sufficiently advised, the Court rules as follows:

CR 12.02(f) provides that a defense may be made by motion for "failure to state a claim upon which relief can be granted." In reviewing a motion to dismiss, "the pleadings should be construed in a light most favorable to the plaintiff and all allegations taken in the complaint to be true." *Littleton v. Plybon*, 395 S.W.3d 505, 507 (Ky. App. 2012). A trial court "should not grant the motion unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim." *Edmonson County v. French*, 394 S.W.3d 410, 413 (Ky. App. 2013). In other words, "if the facts alleged in the Complaint can be proved, would Plaintiff be entitled to relief?" *Bagby v. Koch*, 98 S.W.3d 521, 522 (Ky. App. 2002).

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Additionally, "the question [before the trial court on a CR 12.02(f) motion] is purely a matter of law." *D.F. Bailey, Inc. v. GRW Engineers Inc.*, 350 S.W.3d 818 (Ky. App. 2011). In a similar vein – given the thrust of Plaintiff's Amended Complaint – the constitutionality of the targeted legislation presents an issue of law for this Court. *Louisville/Jefferson County Metro Government Waste Management District v. Jefferson County League of Cities, Inc.*, 626 S.W.3d 623, 628 (Ky. 2021).

Moreover, in deference to the legislative branch, a statute passed by the General Assembly is not to be struck down unless the alleged violation of the Commonwealth's Constitution is "clear, complete and unequivocal." *Seum v. Bevin*, 584 S.W.3d 771, 775 (Ky. App. 2019) (citations omitted). Consequently, any party challenging the constitutionality of a law bears a significant burden to sustain such an attack. *Id.*

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- **Standing Under House Bill 355** – At the very outset of its analysis, the Court examines Defendant's assertion that Plaintiffs, as a matter of law, lack standing to dispute the constitutionality of House Bill ("HB") 355, which governs real-property appraisers. Per averments in their Amended Complaint, Plaintiffs are licensed "public adjusters," not real-property appraisers. Am. Compl. ¶¶ 1-10, at unnumbered pp. 1-3. In this regard, then, HB 355 does not regulate Plaintiffs' business practices.

Importantly, as Defendant aptly emphasizes (Mot., at pp. 15-16), "[i]t is an elementary principle that constitutionality of a law or its application is not open to challenge by a person or persons whose rights are not injured or jeopardized thereby." *Kentucky Unemployment Insurance Commission v. Nichols*, 635 S.W.3d 46, 50 (Ky. 2021) (quoting *Merrick v. Smith*, 347 S.W.2d 537,

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538 (Ky. 1961)). Applying *Nichols* to the fact Plaintiffs are alone "public adjusters," the Court is compelled to conclude that "it appears [Plaintiffs] would not be entitled to relief under any set of facts which could be proved" to support a challenge to HB 355.

Accordingly, any claim in the Amended Complaint attacking this particular bill as unconstitutional will be dismissed.

* * * * *

The foregoing being established, the Court now addresses Plaintiffs' various challenges to House Bill ("HB") 568:

- **Special Legislation Claim** – Focusing on Plaintiffs' claim of "special legislation," judicial precedent in the Commonwealth has long recognized a simple, clear distinction between a general law and a special law: "[a] statute which relates to persons or things *as a class* is a general law, while a statute which relates to particular persons or things *of a class* is special." *Johnson v. Commonwealth ex rel. Meredith*, 165 S.W.2d 820, 825 (Ky. 1942) (emphasis added) (quoted and relied on in *Zuckerman v. Bevin,* 565 S.W.3d 580, 599 (Ky. 2018)).

Consequently, as a matter of law, HB 568 – directed at Kentucky's licensed public adjusters as an entire class – is decidedly a general law, not a special one. As such, Plaintiffs' "special legislation" claim in Count I of their Amended Complaint will be dismissed.[1]

- **Due Process / Equal Protection / Arbitrariness Claims** – Plaintiffs cite Section 2 of the Kentucky Constitution in support of Counts II, III, and VI of the Amended Complaint.

[1] As Defendant points out, "[a] classification by the legislature should be affirmed unless it is positively shown that the classification is so arbitrary and capricious as to be hostile, oppressive and utterly devoid of rational basis." *Delta Air Lines, Inc. v. Commonwealth, Revenue Cabinet*, 689 S.W.2d 14, 19 (Ky. 1985). Equally as important, Kentucky law dictates that whether legislation is "hostile, oppressive and utterly devoid of a rational basis" is a question of law. *Id.* As discussed in greater detail below, the absence of a "rational basis" cannot be attributed to HB 568.

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This particular provision is in fact deemed, as part of the Commonwealth's Bill of Rights and consistent with judicial precedent, the source of traditional "due process" and "equal protection" rights. *E.g., Beshear v. Acree*, 615 S.W.3d 780, 816 (Ky. 2020). Furthermore, the plain language of Section 2 speaks to the issue of arbitrariness by dictating that "[a]bsolute and arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic."

Whether analyzing an alleged abridgement of "due process" or "equal protection" rights or examining supposed "arbitrary" legislation, the constitutionality of a subject law will be upheld so long as it has a "rational basis." *Id.* Along these lines, the Court rules here that, as a matter of law, HB 568 has a "rational basis," representing as it does a sensible extension of a comprehensive regulatory scheme promulgated long ago by the General Assembly when "public adjusters" – as creatures of statute – were first licensed.

More pointedly, the preamble of HB 568 announces its purpose as "relating to public protection," and Plaintiffs do not squarely refute this to be the bill's aim. Nor do they take issue with the legislature's power to police a profession it brought into existence, which profession has always been the subject of extensive regulation. Instead, arguing the supposed fact that independent/staff adjusters excluded from the bill's reach conduct their duties in a manner "identical" to that of public adjusters (*e.g.*, Resp., at pp. 1, 5), Plaintiffs attack the "rationality" of HB 568.

This assertion regarding independent/staff adjusters is not true. In actuality, independent/staff adjusters and public adjusters are quite dissimilar in one critical respect: the former do not charge insureds for negotiating claims, whereas the latter do in exchange for what Plaintiffs themselves depict as their "core function."[2] Resp., at p. 1. By prohibiting this function

[2] Arguably, the fact adjusters seek compensation for negotiating claims was one of the chief bases for declaring in KBA U-48 ("U-48") that such conduct by non-attorneys constitutes the unauthorized practice

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and also limiting the percentage public adjusters can charge in relation to claim recoveries, the General Assembly rationally sought to advance "public protection."

Plaintiffs further argue that, by banning the act of negotiating, HB 568 irrationally and arbitrarily "destroy[ed]" their profession. Resp., at p. 8. This is also untrue. The bill does not eliminate said vocation and does not take Plaintiffs' licenses away; they can "continue to inspect property, document losses, prepare estimates, organize claim documentation, [and] advise insureds" using this collected information. Mot., at p. 9. In this way, public adjusters are able to assist clients by preparing them for discussions with adjusters employed by insurance companies, the latter of which are themselves highly regulated by the Commonwealth and subject to suit under KRS 304.12-230 for unfair claims settlement practices.

For the foregoing reasons, the Court concludes HB 568 is not "arbitrary" and instead enjoys a "rational basis" through the greater protection it affords Kentucky consumers. As a result, Counts II, III, and VI of Plaintiffs' Amended Complaint will be dismissed.

- **Contracts Clause Claim** – Plaintiffs maintain in Count IV of their Amended Complaint that HB 568 violates Section 19's prohibition against "any law impairing the obligation of contracts." Am. Compl. ¶¶ 89-93, at unnumbered pp. 20-21.

As an initial matter, the contract-impairment language of Section 19 does not protect all contracts affected by allegedly offending legislation. Instead, Section 19's prohibition is triggered when a law is applied to contracts formed before its passage, not after; even then, there are instances when retroactive laws permissibly impact existing obligations. *See generally Maze v. Board of Directors for the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund,*

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of law. Separately, as an aside, Defendant's reliance on U-48 is debatable given that the record is unclear whether this particular opinion served as a driving force behind the General Assembly's passage of HB 568.

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559 S.W.3d 354 (Ky. 2018); *Jones v. Board of Trustees of Kentucky Retirement Systems*, 910 S.W.2d 710 (Ky. 1995).[3]

Here, turning to the specifics of their Section 19 claim, Plaintiffs argue that HB 568 prohibits them from negotiating with insurers in connection with "contractual obligations [undertaken] with clients prior to [its] enactment . . . ." Am. Compl. ¶ 89, at unnumbered p. 20. While Sections 4 and 7 of HB 568 "[only] apply to contracts entered into on or after [its] effective date," Plaintiffs emphasize that this language necessarily excludes Section 5 of the bill, which nominally contains a prohibition against all negotiating upon the law's passage.

The question thus becomes whether Kentucky's Contracts Clause prohibits a legislative enactment such as HB 568 that appears to block a public adjuster's right to negotiate with insurers pursuant to contracts in existence before the law was passed. From the Court's perspective, Defendant persuasively argues that, under the analytical framework advanced in *Maze, supra*, the bill does not run afoul of Section 19 in this regard. More specifically, as the Court interprets *Maze, supra,* at 368-73, public adjusters cannot complain about HB 568's ostensible retroactive suspension of negotiating due to the manner in which their conduct has always been heavily regulated via statute, and also because the General Assembly practiced its inherent policing powers passing legislation deemed critical to "public protection."

For the foregoing reasons, then, Count IV of Plaintiffs' Amended Complaint will be dismissed.[4]

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[3] Section 19 parallels the contract-impairment language found in Article I, Section 10, Clause 1 of the federal constitution. For just short of two centuries, the U.S. Supreme Court has held that the Contracts Clause can only be implicated when a law is applied to agreements formed before its passage; the Clause does not prohibit a law that regulates the manner in which future contractual relationships are formed. *Ogden v. Saunders*, 25 U.S. 213, 269 (1827).

[4] In the alternative, the Court posits that any action taken against public adjusters – disciplinary or otherwise – for negotiating with insurers in connection with pre-HB 568 contracts would likely be unsuccessful. Per

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- **Takings Clause Claim** – In Count V of their Amended Complaint, Plaintiffs allege "HB 568 effects a regulatory taking by rendering [their] professional licenses and business interests . . . economically idle without providing just compensation." Am. Compl. ¶ 98, at unnumbered p. 22.

Yet, engaging in the business of a licensed "public adjuster" is not a fundamental right; rather, it is a privilege created and regulated by statute. *See Bobby Preece Facility v. Commonwealth,* 71 S.W.3d 99, 102, 104 (Ky. App. 2001) (interest in gaming license more akin to privilege than right; regulatory license is not a property right compensable under the Takings Clause). From this Court's perspective, the General Assembly can certainly define the scope of any profession it has the power both to create and eliminate.

Relying on *Bobby Preece Facility*, the Court concludes Plaintiffs do not have a sustainable takings claim as a matter of law, and, consequently, Count V of the Amended Complaint will be dismissed.

* * * * *

Based on the above, IT IS HEREBY ORDERED AND ADJUDGED that the Motion to Dismiss of Defendant is **GRANTED** in all respects, there being an insufficient showing by Plaintiffs the constitutional violations they allege 3are "clear, complete and unequivocal." Accordingly, the Amended Complaint for Declaratory and Injunctive Relief is **DISMISSED**, with prejudice to refiling.

KRS 446.080(3), statutes are not to be "construed to be retroactive, unless expressly so declared." The Court notes there is no explicit decree Section 5 of the bill is to be retroactively applied to public-adjuster contracts in existence before the bill's passage.

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There being no just reason for delay, this is a final and appealable Order.

SO ORDERED this 20th day of October, 2026.

HON. JESSICA E. GREEN
Judge, Jefferson Circuit Court

cc: Counsel of Record

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