IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY, DIVISION OF INSURANCE, ALICE A. MOLASKY-ARMAN, COMMISSIONER OF INSURANCE,
Appellant,
vs.
PAYROLL SOLUTIONS GROUP, LIMITED, INC,; PAYROLL SOLUTIONS, INC.; PAYROLL SOLUTIONS I, INC.; PAYROLL SOLUTIONS II, INC.; PAYROLL SOLUTIONS III, INC.; PAYROLL SOLUTIONS IV, INC.; PAYROLL SOLUTIONS V, INC.; PAYROLL SOLUTIONS VI, INC.; PAYROLL SOLUTIONS VII, INC.; HOWARD WINTERS, AN INDIVIDUAL; SUZANNE WINTERS, AN INDIVIDUAL; AND TIMOTHY MEINFIELD, AN INDIVIDUAL,
Respondents.

No. 50678

ORDER OF REVERSAL AND REMAND

This is an appeal from an order granting a petition for judicial review in an insurance matter. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

Nevada Division of Insurance (the Division) appeals the district court's order granting judicial review and setting aside the Division's administrative order finding respondents Payroll Solutions, et al., to be unlawfully operating a multiple employee welfare arrangement (MEWA). The Division contends that the district court erred by applying the 2007 version of NRS 616B.691 retroactively in adjudicating this dispute. We agree because neither legislative intent nor the substance of

recent statutory amendments indicate that NRS 616B.691 should be applied retroactively.

The Legislature did not express a clear intent to apply the statute retroactively

This court presumes that statutes can only be applied prospectively unless there is a strong Legislative intent otherwise. See Pressler v. City of Reno, 118 Nev. 506, 511, 50 P.3d 1096, 1099 (2002) ("We have previously concluded that when the Legislature does not state otherwise, statutes have only prospective effect."); Halloway v. Barrett, 87 Nev. 385, 390, 487 P.2d 501, 504 (1971) ("It [is] . . . the law of this state that statutes are presumed to operate prospectively and shall not apply retrospectively unless they are so strong, clear and imperative that they can have no other meaning or unless the intent of the [L]egislature cannot be otherwise satisfied."); Norman J. Singer and J.D. Shambie Singer, 2 Sutherland Statutory Construction § 41:4, at 400-01 (7th ed. 2009) ("Retrospective operation is not favored by courts, and a law is not construed as retroactive unless the act clearly, by express language or necessary implication, indicates that the legislature intended a retroactive application.").

Here, the Legislature never stated that the 2007 amendment to NRS 616B.691 was a clarification or that it could be applied retroactively. Therefore, our presumption against retroactive application remains.[1]

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[1]Payroll Solutions argues that the Legislative Counsel's Digest that summarizes the amendments to the statute and Senator Warren B. Hardy II's declaration, which explains Senator Hardy's understanding of the legislative intent, indicate that the amendments clarified NRS 616B.691 and, therefore, the Legislature intended for the statute to be applied retroactively. We do not find this evidence to be persuasive in overcoming

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The 2007 amendments substantively changed the meaning of NRS 616B.691

Despite our presumption against retroactivity, statutory amendments that do not substantively alter existing law are deemed to be a clarification of existing laws and may be properly applied to disputes that arose prior to the legislative amendment. See NRS 0.023. We look to the statute as a whole to determine whether a statutory amendment was a substantive change or a mere clarification. See A Minor v. Clark Co. Juvenile Ct. Servs., 87 Nev. 544, 548, 490 P.2d 1248, 1250 (1971) ("[L]egislative . . . intent must be gathered from considerations of the entire statute or ordinance, and not from consideration of only one section thereof."); see also Nevada Comm'n on Ethics v. Ballard, 120 Nev. 862, 866, 102 P.3d 544, 546 (2004) (interpreting statutes in the context of their entire statutory scheme); 2A Sutherland § 46:5, at 189-90 ("[E]ach part or section [of a statute] should be construed in connection with every other part or section to produce a harmonious whole.").

. . . continued

this court's presumption against applying a statute retroactively. See Norman J. Singer and J.D. Shambie Singer, 2A Sutherland Statu tory Construction § 48:1, at 537 (7th ed. 2007) ("[C]ommentaries printed with the general statutes which were not enacted into law by the legislature are not treated as binding authority by the court."); id. § 48:15, at 614 ("[A]ffidavits of sponsors of legislation regarding their intent that legislation would apply retroactively could not be considered when construing the legislation, where the statute did not mention retroactive application nor could such an application be inferred from the language of the statute."); A-NLV Cab Co. v. State, Taxicab Authority, 108 Nev. 92, 95, 825 P.2d 585, 587 (1992) ("'A legislator's statement is entitled to consideration . . . when it is a reiteration of legislative discussion and events leading to adoption of proposed amendments rather than merely an expression of personal opinion.'") (quoting Cal. Tchrs. Ass'n v. San Diego Com. College, 621 P.2d 856, 860 (Cal. 1981)).

In 2007 the Legislature amended NRS 616B.691, in relevant part, as follows (strikeouts indicate deletions and underlines indicate additions):

> 2. ~~An~~ If an employee leasing company complies with the provision of subsection 3, the employee leasing company shall be deemed to be the employer of its leased employees for the purposes of sponsoring and maintaining any benefit plans ~~[.]~~, including, without limitation, for the purposes of the Employee Retirement Income Security Act of 1974.
>
> 3. An employee leasing company shall not offer its employees any self-funded industrial insurance program. An employee leasing company shall not act as a self-insured employer or be a member of an association of self-insured public or private employers pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS. ~~or pursuant to title 57 of NRS.~~

2007 Nev. Stat., ch. 536, § 30.8, at 3340.

Whereas subsection 3 of the 2005 version states that "[a]n employee leasing company shall not offer its employees any self-funded insurance program . . . pursuant to title 57 of NRS," the 2007 amendment limited the prohibition of self-funded insurance to "industrial insurance" and removed any reference to the Nevada insurance code. Id. (emphasis added.) Also, whereas the 2007 amendment forces employee leasing companies to "compl[y] with the provision of subsection 3" to be considered "the employer," the 2005 version did not include this requirement. Id.

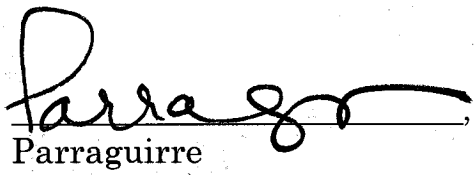
These changes were substantial.

Prior to 2007, Payroll Solutions could not self-fund insurance pursuant to NRS title 57, Nevada's insurance code. After 2007, with the exception of industrial insurance, Payroll Solutions could offer its employees self-funded insurance. As a result, we conclude that the 2007

amendments were not mere clarifications but instead substantively changed NRS 616B.691.

Therefore, we conclude that the district court erred by applying the 2007 amended version of NRS 616B.691 to govern this dispute. Accordingly, we

REVERSE the order of the district court and REMAND this matter to the district court so that it can properly address Payroll Solution's petition for judicial review under the 2005 version of NRS 616B.691.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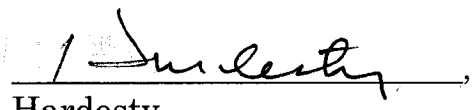
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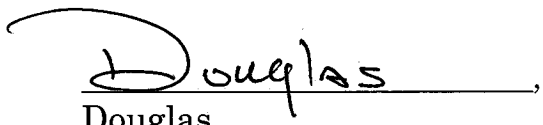
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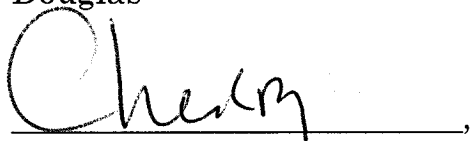
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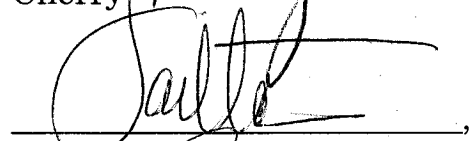
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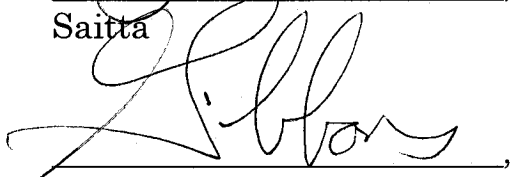
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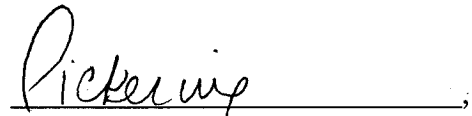
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Pickering

cc: Hon. Jessie Elizabeth Walsh, District Judge
Janet Trost, Settlement Judge
Attorney General/Carson City
Attorney General/Las Vegas
Lewis & Roca, LLP/Las Vegas
Littler Mendelson/Las Vegas
Laxalt & Nomura, Ltd./Reno
Eighth District Court Clerk