

**Kentucky Supreme Court**  
**Cases of Note**  
**[November-December, 2011](#)**

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1. Hold down the control (“Ctrl”) key and click on the link.
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**WORKERS COMPENSATION**

**Doctors’ Associates, Inc. v. Uninsured Employers’ Fund; Tonda Michelle Brown; UBC, D/B/A Subway; Honorable John B. Coleman, Administrative Law Judge; and Workers’ Compensation Board**  
**[2010-SC-000658-WC](#) November 23, 2011**

Opinion of the Court by Chief Justice Minton. All sitting; all concur. Doctors' Associates, Inc., (DAI) owns the "Subway" trademark and franchises the right to operate Subway sandwich shops worldwide. In workers’ compensation proceedings in Kentucky, the Administrative Law Judge (ALJ) dismissed the Uninsured Employers' Fund's (UEF) claim against DAI for benefits to an employee of an uninsured DAI franchisee located in Kentucky. The sole issue submitted for a decision by the ALJ was whether DAI was a contractor and, thus, liable to the employee of its uninsured subcontractor. The ALJ ruled that Kentucky Revised Statutes (KRS) 342.610(2), which creates up-the-ladder liability for contractors, does not encompass a franchisor-franchisee relationship. The Workers' Compensation Board affirmed. The Supreme Court reversed the opinion of the Court of Appeals and affirmed the Workers’ Compensation Board opinion. The Court found that nothing in Chapter 342 precludes a franchisor who meets the definition found in KRS 342.610(2) from also being considered a contractor. And the ALJ’s legal conclusion to the contrary was erroneous. But the ALJ properly found, under the particular facts of this case, that DAI was not a contractor.

**Vision Mining Inc. v. Jessee Gardner, et al. and Peabody Coal Company v. Joe Martinez, et al.**  
**[2010-SC-00311-WC](#) December 22, 2011**  
**[2010-SC-00438-WC](#) December 22, 2011**

Opinion of the Court by Justice Scott. Cunningham, Noble, and Venters, JJ., concur. Schroder, J., concurs in part and dissents in part by separate opinion. Minton, C.J., dissents by separate opinion, in which Abramson, J., joins. This case arose from the dismissal of two coal workers’ applications for benefits because the “consensus readings” of their X-rays interpreted them to be negative for coal workers’ pneumoconiosis. The Supreme Court held the “consensus procedure” required by KRS 342.316 for proving the existence of coal workers’ pneumoconiosis and the “clear and convincing” standard the statute requires to rebut such a consensus unconstitutional. Specifically, the court considered the distinction between coal workers’ pneumoconiosis claimants and other pneumoconiosis claimants to be arbitrary and therefore in violation of the equal protection guarantees of the Federal and State Constitutions.