

**Kentucky Court Of Appeals**  
**Cases of Note**  
**March-April, 2015**

Note: To open hyperlink, take one of the following steps:

1. Hold down the control (“Ctrl”) key and click on the link.
2. Right-click on the link and select “Open Hyperlink”.

**DAMAGES**

**Service Financial Company v. Ware**

**2013-CA-002121 04/10/2015 2015 WL 1611798 Rehearing Pending**

Opinion by Chief Judge Acree; Judges Stumbo and Taylor concurred. The Court of Appeals granted discretionary review to address appellant’s appeal of an opinion by the Franklin Circuit Court affirming a Franklin District Court order of default judgment that limited post-judgment interest on a retail installment contract to 12% per annum. Appellant is the assignee of a retail installment contract executed by appellee. Appellee defaulted, and appellant filed suit to collect on the contract. After appellee failed to respond to the lawsuit, appellant moved for default judgment and, citing KRS 360.040 - which allows a court to deviate from the statutory post-judgment interest rate of 12% when a party has agreed to accruing interest on a written obligation - requested post-judgment interest at the rate of 15% per annum, the purported interest rate contained in the contract. The district court denied the claim of 15% post-judgment interest and allowed only 12% post-judgment interest. The circuit court affirmed, finding the damage claim to be an unliquidated sum. The Court of Appeals granted discretionary review and affirmed on the alternative ground that the contract sued upon was a retail installment contract in which appellee agreed to pay the cash price of the vehicle plus a time price differential (finance charge), but did not agree to the accrual of interest at any rate, much less a rate in excess of that stated in KRS 360.040. Because the contract bore no interest, appellant was only entitled to post-judgment interest at the statutory rate of 12% per annum.

**WORKERS' COMPENSATION**

**Ervin Cable Construction, LLC v. Lay**

**2014-CA-001047 04/03/2015 2015 WL 1537619 Released for Publication**

Opinion by Judge VanMeter; Judges Clayton and Nickell concurred. The injured employee of a subcontractor brought a negligence action against the contractor. The circuit court denied the contractor’s motion for summary judgment, but the Court of Appeals reversed and remanded, holding that the contractor was entitled to “up-the-ladder” immunity from tort liability as to the employee. The Court noted that even if there was no written agreement between the contractor and the subcontractor; the record reflected that the employee suffered the injury in the course and scope of his employment with the subcontractor and was receiving workers’ compensation benefits from the subcontractor for his injury. Moreover, a written agreement between the contractor and subcontractor was not necessarily required, since the facts clearly established the contractor/subcontractor arrangement.