

Kentucky Supreme Court
Cases of Note
May-June, 2016

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

INSURANCE

Allstate Insurance Company v. Craig T. Smith

2013-SC-000732-DG May 5, 2016

Opinion of the Court by Chief Justice Minton. All sitting. Minton, C.J.; Cunningham, Hughes, Keller, Venters, and Wright, JJ., concur. Noble, J., concurs by separate opinion and states that in reality, the purchaser of insurance places reliance on the insurance agent selling a policy to provide information about available coverages, and there is no valid logic in requiring notice of available coverages on “first renewal” but not on the initial purchase of the policy, particularly here, when it was purchased before the prevalence of UM and UIM coverages. Smith suffered injuries in a motor vehicle accident and settled his injury claim with the adverse driver’s insurer for policy limits. Smith then submitted a UIM claim to his insurer, Allstate Insurance Company, claiming loss from injuries in excess of the amount recovered from the adverse driver’s insurer. Allstate denied the claim because Smith’s policy did not provide for UIM coverage and Smith sued Allstate for breach of contract and a declaration of rights as to UIM coverage. He also sought punitive damages for Allstate’s alleged bad faith in denying him UIM coverage. Allstate counterclaimed to have its rights declared under the policy. The trial court granted summary judgment in favor of Allstate because Smith had not paid a premium for UIM or requested UIM coverage. The Court of Appeals reversed the trial court’s judgment even though it rejected the bulk of Smith’s arguments, holding that Allstate had a duty under a specific provision of the MVRA to advise Smith of possible UIM coverage. The Supreme Court granted discretionary review and reversed the Court of Appeals, holding that Allstate was under no obligation to remind Smith of possible UIM coverage 8 with each renewal of his policy. No such obligation has ever been imposed on an insurer and no provision of the MVRA alters this fact. Further, UIM is an option coverage to be requested by the insured and it must be mentioned by the insurer only when giving the insured “notice of first renewal.”

DAMAGES

Saint Joseph Healthcare, Inc., Etc. v. Larry O’Neil Thomas, Etc., et al.

2014-SC-000008-DG May 5, 2016

Opinion of the Court by Justice Venters. All sitting. Minton, C.J.; Hughes, Keller, Noble, Venters, and Wright, JJ., concur. Cunningham, J., concurs by separate opinion. Plaintiff, Estate of James Milford Gray, filed suit against Saint Joseph Hospital alleging that Gray died after the hospital’s emergency room employees and independent contractor physicians violated the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd (EMTALA) by twice releasing Gray from the hospital in a medically unstable condition. Issues presented: 1) Whether the conduct of the hospital staff, as shown by evidence at trial, justified an award of punitive damages; 2) Whether evidence at trial sufficiently proved that the hospital had ratified the conduct of the emergency room personnel, as required by KRS 411.184(3) for imputing punitive damages to their employer; 3) Whether the hospital is liable for EMTALA violations committed by independent contractor physicians employed at the hospital; 4) Whether the punitive damage award of \$1.45 million was unconstitutionally excessive in light of the fact that the hospital’s share of compensatory damages was \$3750.00; 5) Whether trial court abused its discretion by failing to remove sleeping juror. Held: 1) Evidence that

emergency room discharged Gray from the hospital in severe pain, and had him removed from the premises in an ambulance, and then upon his return, left at unattended at a motel, and upon his second return released him again, still in pain, with threat of arrest of he returned supported an award of punitive damages. 2) Ratification under KRS 411.184(3) may be established by circumstantial evidence from which it may be inferred that the employer approved of employees tortious conduct. Threat of hospital's Director of Emergency Room Services to have Gary arrested if he returned to the hospital was conduct explicitly ratifying the previous release of Gray by emergency room staff. 3) EMTALA places statutory duties on the hospital. The hospital does not escape liability for EMTALA violation 5 committed by independent contractor physicians and other nonemployees affiliated with hospital to provide emergency room services. 4) An award of punitive damages "must be based upon the facts and circumstances of the defendant's conduct and the harm to the plaintiff" with "reasonableness" being the decisive measure." There is no "mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable that would fit every case." Factors include the reprehensibility of the conduct, the ratio of the punitive damages to compensatory damages, and applicable civil or criminal penalties. A punitive to compensatory damage ratio in excess of single digits may be justified when plaintiff's circumstances warrant little by way of compensatory damages but tortious conduct of defendant was particularly egregious. Thus, the Supreme Court concluded that punitive damage award of \$1.45 million despite compensatory ward of \$3750.00 was not excessive. 5) Trial court did not abuse its discretion when it allowed sleeping juror to remain on the panel.

WORKERS COMPENSATION

Toyota Motor Manufacturing Kentucky, Inc. v. Jason Tudor, et al.

[2015-SC-000381-WC](#) June 16, 2016

Opinion of the Court by Justice Keller. All sitting. Minton, C.J.; Cunningham, Hughes, Keller, and Venters, JJ., concur. Wright, J., concurs in part and dissents in part by separate opinion in which Noble, J., joins. The ALJ found that Toyota failed to pay TTD benefits when due and that Toyota's in-house physician misled Tudor about the true nature of his injury thus tolling Tudor's statute of limitations. The Board and the Court of Appeals affirmed. The Supreme Court vacated and remanded. As to the TTD issue, the Court noted that Tudor had not missed any time from work and that he had been paid at his usual rate. Because the Court recently rendered an opinion clarifying entitlement to TTD in such situations (*Trane Commercial Systems v. Tipton*, 481 S.W.3d 800 (Ky. 2016)), it remanded to the ALJ for further review consistent with that opinion. As to whether Toyota misled Tudor, the Court noted the ALJ found that the inhouse physician told Tudor he only had bulging discs when a radiologist's report stated the discs were herniated. According to the ALJ, this amounted to misleading Tudor about his "true condition." However, as the Court noted, a neurosurgeon agreed with the in-house physician's assessment that the discs were only bulging. In that circumstance, the Court held the ALJ's finding that Tudor "possibly" had herniated discs was not sufficient to support his finding that Toyota had misled Tudor about his true condition. In order to make a finding that Toyota misled Tudor about his true condition, the ALJ was required to definitively find what the condition was, not what it possibly was. The Court also noted that the ALJ made several other factual findings which were not supported by the record. Therefore, the Court remanded to the ALJ with instructions to review the evidence and make a determination as to Tudor's true condition, to correct any factual misstatements, and to make findings accordingly. The Court did not foreclose the ALJ from ultimately reaching the same conclusion, as long as that conclusion was based on a correct reading of the record.