Kentucky Supreme Court
Cases of Note
September-October, 2016

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1. Hold down the control ("Ctrl") key and click on the link.
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INSURANCE

Samantha G. Hollway v. Direct General Insurance Company of Mississippi, Inc.
2014-SC-000758-DG September 22, 2016

Opinion of the Court by Chief Justice Minton. All sitting; all concur. Hollaway was involved in a low speed collision in a parking lot with Direct General's insured. Direct General arguably assumed liability for causing the accident, but later recanted and disputed liability. Hollaway filed a multitude of claims, including a bad faith claim against Direct General for failing to fairly negotiate her claim. The trial court awarded Direct General summary judgment and the Court of Appeals affirmed. A unanimous court affirmed the Court of Appeals. Though it is debatable whether the insurance company admitted causing the accident, it never conceded liability for the injuries she claims she sustained from the accident—Hollaway's profession rendered itself to injuries of this type. But even if Direct General conceded liability, Hollaway failed to establish that the insurer acted with the level of intent necessary to prove a bad-faith claim. Notably, the Court removed the word "evil" from consideration in this aspect of the analysis.

Philadelphia Indemnity Insurance Company, Inc. v. Richard Tryon, et al.
2014-SC-000354-DG AND
Encompass Indemnity Company v. Richard Tryon, et al.
2014-SC-000357-DG October 20, 2016

Opinion of the Court by Chief Justice Minton. All sitting. Minton, C.J.; Cunningham, Hughes and Keller, JJ., concur. Wright, J., concurs in part and dissents in part by separate opinion in which Noble and Venters, JJ., join. Tryon owned three automobiles and each vehicle was insured by a different policy through a different insurer—and no policy included the other vehicles. He was involved in an accident and sought underinsured motorist (UIM) benefits from all of his insurers. Philadelphia and Encompass did not insure the vehicle, and both companies claimed owned-but-not-scheduled-for-coverage provisions in their respective policies excluded UIM coverage in this context. Writing for the Court, Chief Justice Minton determined that such provisions are enforceable as a matter of law, overturning the holding of Allstate Ins. Co. v. Dicke, 862 S.W.2d 327 (Ky. 1993). Kentucky's Motor Vehicle Reparations Act makes UIM coverage optional, and allows limitation of coverage so long as any limits are not inconsistent with the Act. The Court saw no reason why insureds should not be expected to read their policies and negotiate coverage with insurers. Such policies are enforceable as a matter of Kentucky public policy so long as they are clear and unambiguous in their intent to exclude coverage. Under this standard, Chief Justice Minton concluded that the Encompass provision clearly excluded UIM coverage in this instance, but the Philadelphia provision did not.

TORTS

Ralph M. Goodwin v. Al J. Schneider Company D/B/A Galt House & Galt House East
2015-SC-000380-DG October 20, 2016

Opinion of the Court by Justice Keller. All sitting. Minton, C.J.; Hughes, Noble, and Wright, JJ., concur. Venters, J., concurs in result only. Cunningham, J., dissents without opinion. Mr. Goodwin, who was staying with his wife at the Galt House, slipped and fell while getting into the shower. Goodwin filed suit alleging that the Galt House failed to warn of the dangerously slippery condition and/or to take reasonable care to eliminate the condition by, in pertinent part, providing a bathmat. The Galt House moved for summary judgment arguing that it was not an insurer of Goodwin's safety and that he had failed to exercise ordinary care to prevent his injury from an open and obvious condition. The circuit court granted 6 the Galt House's motion and Goodwin appealed to the Court of Appeals, which affirmed. The Supreme Court reversed the Court of Appeals. In doing so, the Court noted the evolution of the law regarding the "open and obvious" affirmative defense that began with Kentucky River Medical Center v. McIntosh, 319 S.W.3d 385 (Ky. 2010) and continued through Shelton v. Kentucky Easter Seals Society, Inc., 43 S.W.3d 901 (Ky. 2013) and Carter v. Bullitt Host, LLC, 471 S.W.3d 288 (Ky. 2015). After summarizing the preceding cases, the Court held that "a landowner has a duty to take reasonable steps to eliminate unreasonably dangerous conditions on its land. The question for the court on summary judgment is whether the landowner breached that duty, a duty that exists whether the conditions are open and obvious or hidden. Thus, in determining whether the landowner has breached that duty, the court does not look to whether the conditions were open and obvious but to whether the landowner took reasonable steps to eliminate the risks created by the conditions." Applying the preceding to the Galt House, the Court noted that the circuit court, in granting summary judgment, and Court of Appeals, in affirming, focused on a lack of industry standards setting forth a duty to provide bathmats. The Court held that the issue was not whether the Galt House had a duty to provide bathmats but whether the failure to provide bathmats breached the Galt House's duty of care.