Kentucky Supreme Court
Cases of Note
May-June, 2017

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".

Note: No Court in May

CONTRACT

Wanda Jean Thiele, et al. v. Kentucky Growers Insurance
2015-SC-000158-DG June 15, 2017
Opinion of the Court by Justice Cunningham. Minton, C.J.; Cunningham, Hughes, Keller, Venters, and Wright, JJ., sitting. Minton, C.J.; Hughes, Keller, and Venters, JJ., concur. Wright, J., dissents by separate opinion. VanMeter, J., not sitting. In 2004, Hiram Campbell purchased a homeowner's insurance policy from the Appellee, Kentucky Growers Insurance Company ("Insurer"). The policy provided coverage for Hiram's home. The policy was self-renewing and continued in effect after Hiram died in late 2005. Following Hiram's death, his daughter, Appellant Wanda Thiele ("Thiele"), moved into Hiram's residence. She was also the executrix of Hiram's estate. In January 2011, Thiele discovered extensive termite damage throughout the home, including damage to wall paneling and flooring. Upon discovering the damage, Thiele contacted Insurer to make a claim under the homeowner's policy provision covering collapse. Insurer denied Thiele's claim. Thiele filed a declaration of rights action in Rockcastle Circuit Court resulting in a judgment in Thiele's favor. On appeal, a unanimous Court of Appeals' panel reversed the trial court. The Supreme Court of Kentucky granted discretionary review, reversed the Court of Appeals, and held that Thiele's residence had not "collapsed" under the definition adopted in Niagara Fire Ins. Co. v. Curtsinger, 361 S.W.2d 762, 763 (Ky. 1962). In so holding, the Court declined to adopt the more lenient majority rule.

Note: The above case is one in which IIK submitted an amicus brief.

WORKERS COMPENSATION

LKLP CAC, Inc. v. Brandon Fleming, et al.
2016-SC-000407-WC June 15, 2017
Opinion of the Court by Justice Keller. All sitting; all concur. In 2010, an ALJ awarded Fleming benefits based on a physical permanent impairment rating of 13% and a psychological permanent impairment rating of 5%. Fleming filed a motion to reopen in 2014, alleging a worsening of condition and an increase in impairment. A different ALJ found that Fleming had a 23% physical permanent impairment rating and a 12% psychological permanent impairment rating. In pertinent part, the ALJ relied on LKLP CAC's expert in concluding that Fleming had a 235 physical permanent impairment rating. LKLP CAC argued that the ALJ's reliance was misplaced because that physician opined that Fleming had a 23% physical permanent impairment rating at the time of the opinion and award, thus, according to that physician, Fleming's physical permanent impairment rating had not increased. The majority of the Workers' Compensation Board, the Court of Appeals, and the Supreme Court disagreed. In doing so, the Supreme Court noted that

the original ALJ's finding that Fleming had a 13% physical permanent impairment rating during the initial litigation was res judicata. The Court then held that it is the ALJ's opinion regarding permanent impairment rating that controls, not a physician's. While either party presumably could have presented evidence that Fleming had a 23% physical permanent impairment rating during the initial litigation, neither did. Thus, the ALJ on reopening could be bound by evidence that was never presented during the initial litigation.