Kentucky Supreme Court
Cases of Note
July--August, 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 July

INSURANCE

Indiana Insurance Company v. James Demetre
2015-SC-000107-DG August 24, 2017
Opinion of the Court by Justice Hughes. All sitting. Minton, C.J.; Cunningham, Keller, Venters, and Wright, JJ., concur. VanMeter, J., dissents by separate opinion. Demetre sued his insurer, the Indiana Insurance Company, for bad faith arising from breach of his insurance contract, violation of the Kentucky Unfair Claims Settlement Practices Act, and violation of the Kentucky Consumer Protection Act. Demetre, the owner of a vacant property that had previously operated as a gas station, was sued by a family occupying a nearby residence alleging the migration of petroleum and other similar substances. Subsequently, Demetre contacted his insurer which provided a defense and ultimately settled the family's claims. Indiana Insurance Corporation maintained that by providing Demetre with a defense and indemnification, he had no viable bad faith claim. After an eight-day trial, the jury awarded Demetre $925,000 in emotional distress damages and $2,500,000 in punitive damages. The Court of Appeals affirmed the trial court's judgment in its entirety. Accepting discretionary review, the Court affirmed the judgment of the Court of Appeals. The Court determined that Indiana Insurance Company's decisions to defend the insured under a reservation of rights, seek declaratory judgment, and settle tort claims did not preclude a bad faith claim. Further, the Court determined as a matter of first impression that the requirement outlined in Osborne v. Keeney, 399 S.W.3d 1 (Ky. 2012) for expert 5 medical or scientific proof is limited to claims of intentional or negligent infliction of emotional distress.

Note: IIK filed an amicus brief in this case.

State Farm Mutual Automobile Insurance Company v. Roniesha Adams f/k/a Roniesha Sanders, et al.
2015-SC-000366-DG August 24, 2017
Opinion of the Court by Justice Keller. All sitting. Minton, C.J.; Cunningham, Hughes, Keller, and VanMeter, JJ., concur. Venter, J., dissents by separate opinion which Wright, J., joins. Roniesha Adams, her son, and her son's father were passengers in a car being driven by Milton Mitchell. The car was rearended, and the driver of the other vehicle fled the scene. Mitchell and his passengers filed claims for benefits under Mitchell's uninsured motorist coverage. State Farm conducted an initial investigation and concluded that the claimants' statements were inconsistent. Therefore, the adjuster asked the car's occupants to give statements under oath, as provided for in the policy. Adams, on the advice of counsel, refused to give a statement under oath. Relying on the language of the policy, State Farm denied coverage and refused to pay any PIP or other benefits. Adams filed suit and the trial court granted declaratory judgment in favor of State Farm. The Court of Appeals reversed, holding that State Farm was required by statute to obtain a court order before it could require Adams to submit to questioning under oath. The Supreme Court

reversed. In doing so, the Court held that the MVRA provides that claimants must submit certain information to an insurer and, if that information is not forthcoming, the insurer should seek relief from the court. See KRS 304.39-208. However, the information covered by the relevant statute involves the claimants' medical condition, not information regarding the underlying accident. Therefore, the Court held that State Farm was entitled to obtain information about the accident via questioning under oath. However, to obtain information about the occupants' medical conditions, State Farm was required to get a court order. Because some of the information State Farm wanted involved the accident, the trial court properly granted judgment in State Farm's favor.

WORKERS COMPENSATION

Family Dollar v. Mamie Baytos, Widow of Stephen Baytos, Deceased, et al.
AND
Mamie Baytos, Widow of Stephen Baytos, Deceased v. Family Dollar, et al.
2015-SC-000194-WC August 24, 2017
2015-SC-000208-WC August 24, 2017
Opinion of the Court by Chief Justice Minton. Minton, C.J.; Cunningham, Hughes, Keller, Venters, and Wright, JJ, sitting. All concur. VanMeter, J., not sitting. The Supreme Court affirmed the Court of Appeals and held that while a decedent has settled all of his or her workers compensation claims for potential income benefits via a negotiated settlement, the settlement does not bar the decedent's spouse from asserting additional claims for income benefits. The spouse of a decedent who wishes to seek additional benefits may not do so via KRS 342.125, but must file his or her own claim for benefits in his or her own right.

Cheryl Blaine v. Downtown Redevelopment Authority, Inc., et al.
2016-SC-000081-WC August 24, 2017
Opinion of the Court by Justice Hughes. All sitting; all concur. Blaine suffered a work-related injury in June 2007, returned to work after approximately seven months, and suffered a second work-related injury in April 2011. In evaluating the worker's compensation claim for Blaine's June 2007 injury, the Administrative Law Judge (ALJ) erroneously concluded that Blaine had not claimed entitlement to permanent total disability (PTD) benefits following her injury. The Workers' Compensation Board remanded the case to the ALJ to consider PTD benefits, and if Blaine was not entitled to PTD benefits, the ALJ was then required to determine the appropriate permanent partial disability (PPD) benefits pursuant to Kentucky Revised Statute (KRS) 342.730 and Fawbush v. Gwinn, 103 S.W.3d 5 (Ky. 2003). Blaine appealed the ruling of the Worker's Compensation Board to the Court of Appeals which affirmed. Affirming the judgment of the Court of Appeals, the Court rejected Blaine's request to reconsider Fawbush or reinterpret KRS 342.730(1)(c)2. Rather, the Court agreed with the Court of Appeals that remand to the ALJ was necessary to assess Blaine's entitlement to PTD or PPD benefits.

Larry Kidd v. Crossrock Drilling, LLC, et al.
2016-SC-000406-WC August 24, 2017
Opinion of the Court by Justice VanMeter. All sitting. Minton, C.J.; Hughes, Keller, VanMeter, and Venters, JJ., concur. Wright, J., dissents by separate opinion in which Cunningham, J., joins. Kidd filed a claim alleging work-related injuries against his employer, Crossrock. Following the hearing before the ALJ, Kidd and the insurance adjustor for Crossrock engaged in settlement negotiations, settling that Crossrock would make a $55,000 lump-sum payment with a waiver of vocational rehabilitation benefits. Neither the ALJ nor Crossrock's attorney was aware of the

settlement discussion. Before Kidd's attorney could file a Form 110, the Department of Workers' Claims' standard form for settlement agreements, the ALJ issued its opinion, awarding Kidd approximately $17,600 for temporary total disability but denying Kidd permanent partial disability, permanent total disability, and future medical benefits. Kidd then filed a petition for reconsideration based on the alleged settlement, which the ALJ denied, concluding Kidd failed to properly present the settlement by filing Form 110 or by presenting a verified motion to adopt the settlement agreement, thus the settlement was outside the scope of a petition for rehearing. Both the Board and the Court of Appeals affirmed. On the sole issue of whether Kidd properly preserved the issue of the alleged settlement agreement, the Supreme Court affirmed the Court of Appeals. This Court held that, although the omission of a Form 110 is not fatal to Kidd's claim, under KRS 342.265(1), he was required to file a verified motion with the settlement correspondence and sufficient documentation in order for the terms of the settlement to be properly before the ALJ; the ALJ and Board properly declined to address this issue.

Steel Creations by and through KESA, et al. v. Injured Workers' Pharmacy, et al.
AND
Injured Workers' Pharmacy, et al. v. Steel Creations by and through KESA, et al.
2016-SC-000222-WC August 24, 2017

Opinion of the Court by Justice Keller. Minton, C.J.; Cunningham, Hughes, Keller, Venters, JJ., and Special Justices David Samford and Kimberly McCann, sitting. All concur. VanMeter and Wright, JJ., not sitting. This workers' compensation claim involved two primary issues. The first is whether a pharmacy is a medical provider for purposes of the employee choice of provider provisions of the statute and regulations. The second involved how to interpret the workers' compensation pharmacy fee schedule. As to the first issue, the Court held that a pharmacy is a medical provider, thus entitling an injured worker to choose where to have prescriptions filled. In doing so, the Court noted that, while the Act does not define medical provider, it does include medications under the definition of medical services. Because medical services are provided by medical providers, it follows that pharmacists, who provide medications, are medical providers. As to the second issue, the Court held that the workers' pharmacy fee schedule, which is contained in 803 KAR 25:092, in essence says what it says, i.e. that a dispensing pharmacy is entitled to be reimbursed for the actual wholesale price it paid plus a $5.00 dispensing fee. Because the parties had not put on any proof regarding the actual wholesale price paid and the ALJ had not made any finding regarding the correct reimbursement rate, the Court remanded for additional fact finding and proof taking.

Note: IIK filed an amicus brief in this case.