

Kentucky Court Of Appeals
Cases of Note
[November-December, 2017](#)

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

Merritt v. Catholic Health Initiatives Inc.

[2016-CA-001470](#) 11/17/2017 2017 WL 5504916

Opinion by Judge Clayton; Chief Judge Kramer and Judge Taylor concurred. Appellant Harold Merritt, Jr. filed a complaint alleging negligence on the part of the medical providers employed by Catholic Health Initiatives, Inc. (CHI), arguing that the providers’ actions resulted in the death of his wife and child following complications arising from his wife’s pregnancy. After filing the negligence claim, Merritt filed a motion for declaratory judgment arguing that CHI and its insurer, First Initiatives Insurance, Ltd., had acted in bad faith during settlement negotiations and were liable for such pursuant to the Unfair Claims Practices Settlement Act (UCSPA). The circuit court determined that First Initiatives was exempt from the UCSPA, denied the motion for declaratory judgment, and granted appellees’ motion for summary judgment. The Court of Appeals affirmed, holding that as a pure foreign captive self-insurance entity wholly owned by CHI, First Initiatives was not engaged in the “business of insurance” and, therefore, was not subject to the UCSPA. The Court reasoned that self-insurers are not engaged in the “business of insurance” because there is no risk shifting or risk distribution, which are necessary components of an insurance contract.

WORKERS' COMPENSATION

Overstreet v. American Printing House for the Blind

[2017-CA-000448](#) 12/08/2017 2017 WL 6061796 Released for Publication

Opinion by Judge J. Lambert; Judges Clayton and Thompson concurred. Appellant was injured twice in 2014 and received permanent partial disability benefits as a result. The Administrative Law Judge (ALJ) determined that those benefits terminated when appellant reached the normal “old-age” Social Security retirement age pursuant to KRS 342.730(4). The Workers’ Compensation Board affirmed, relying primarily on McDowell v. Jackson Energy RECC, 84 S.W.3d 71 (Ky. 2002). The Court of Appeals reversed and remanded, noting that the Supreme Court of Kentucky reversed its holding in McDowell, supra, in its decision of Parker v. Webster Cty. Coal, LLC (Dotiki Mine), 529 S.W.3d 759 (Ky. 2017). That case holds that KRS 342.730(4) violates the right to equal protection and is constitutionally infirm. Accordingly, the Court reversed the Board’s decision and remanded to the ALJ for entry of an opinion and award consistent with the opinion.