

Kentucky Supreme Court
Cases of Note
March-April, 2018

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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

Martin/Elias Properties, LLC v. Acuity, a Mutual Insurance Company
2016-SC-000195-DG April 26, 2018

Opinion of the Court by Chief Justice Minton. All sitting. Minton, C.J.; Cunningham, Hughes, Keller, and VanMeter, JJ., concur. Wright, J., concurs in result only by separate opinion in which Venters, J., joins. The Court applied the doctrine of fortuity to define accident for the purpose of CGL policy coverage. The Court held that if the insured did not intend the event or result to occur and if the event or result that occurred was a chance event beyond the control of the insured, then CGL coverage covering accidents will apply to the benefit of the insured. Applying this rule, the Court held that on the facts of this case, no accident occurred so as to afford the insured CGL policy coverage.

WORKERS COMPENSATION

Jeff Miller v. Tema Isenmann, Inc., et al.
2016-SC-000449-WC March 22, 2018

Opinion of the Court by Justice Wright. All sitting; all concur. Appellant, Jeff Miller, worked for Appellee, TEMA Isenmann, Inc., for fifteen years. Miller was diagnosed with and treated for bladder cancer, which he asserts stemmed from exposure to a workplace carcinogen. He sought permanent total disability 7 benefits based upon his assertion that his bladder cancer amounted to an occupational disease. The administrative law judge (ALJ) awarded the benefits Miller sought. TEMA appealed to the Workers’ Compensation Board, which vacated and remanded back to the ALJ. On remand, the ALJ awarded the same benefits and the Board vacated and remanded yet again. On TEMA’s third appeal, however, the Board affirmed the ALJ. TEMA appealed the Board’s decision to the Court of Appeals, which reversed. Miller appealed that decision to the Supreme Court as a matter of right. The Court of Appeals based its holding on its interpretation of KRS 342.315, which it held required a university evaluation. Without such an evaluation, it held Miller could not prevail. The Supreme Court reversed, as the commissioner had attempted to obtain a university evaluation, but no evaluators chose to review Miller’s case. Therefore, the Court declined to punish Miller for the fact that it was impossible for him to obtain such an evaluation.

Ford Motor Company v. Donald Jobe, et al.
2017-SC-000010-WC April 26, 2018

Opinion of the Court by Justice Wright. Minton, C.J.; Cunningham, Hughes, Keller, Venters, Wright, JJ., concur. VanMeter, J., not sitting. Donald Jobe was injured while working at Ford Motor Company when he tripped while working on Ford’s assembly line. The administrative law judge (ALJ) determined that both Jobe’s hip injury and back impairment were work-related. Specifically, the ALJ found that Jobe’s back impairment was the result of surgery performed in

an attempt to alleviate his hip pain. The ALJ awarded Jobe temporary total disability benefits, permanent partial disability benefits, and medical benefits. Ford appealed to the Workers' Compensation Board, arguing that Jobe failed to meet his burden of proof that the back impairment was work-related. The Board held that the ALJ's decision was based on substantial evidence. Ford appealed the Board's decision to the Court of Appeals, which affirmed. Ford appealed to the Supreme Court. The Supreme Court affirmed, holding there was substantial evidence that Jobe's back impairment had a causal connection to his work-related hip injury.

Michael R. Plumley v. Kroger, Inc., et al.

[2017-SC-000083-WC](#) April 26, 2018

Opinion of the Court by Chief Justice Minton. All sitting; all concur. The Court found no reversible error in this workers' compensation case where the plaintiff alleged three types of error. Before addressing the merits of the plaintiff's claim, the Court addressed preservation of the issues before it, holding that a plaintiff is required to raise an objection if that plaintiff believes a doctor's impairment rating to be non-compliant with the American Medical Association's Guides to Permanent Impairment to warrant appellate review. The Court then held that the doctor's medical findings in this case were grounded in the Guides, which is all that is required under the law, and therefore the ALJ did not commit reversible error by relying upon the doctor's findings. Second, the plaintiff alleged that the Court committed reversible error by not awarding three separate awards for the three injuries the plaintiff suffered. The Court rejected this argument based on precedent and interpreted KRS 342.0011(1)'s definition of injury to preclude separate and successive injuries to the same body part from being considered as one, total injury for the purpose of calculating an award. Lastly, the Court upheld the ALJ's correct application of KRS 342.730(1)(c)(1)'s award multiplier modifiers.