Kentucky Supreme Court
Cases of Note
July-August, 2018

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
American Mining Insurance Company v. Peters Farms, LLC.
2017-SC-000066-DG August 16, 2018
Opinion of the Court by Justice Cunningham. Minton, C.J.; Cunningham, Hughes, Keller, Venters, and Wright, JJ., sitting. Minton, C.J.; Cunningham, Hughes, and Venters, JJ., concur. Wright, J., concurs in part and dissents in part by separate opinion, in which Keller, J., joins. VanMeter, J., not sitting. This is a mineral trespass case concerning whether a mining insurance policy covers liability for the unauthorized removal of minerals from an innocent party not privy to the mining contract. Ikerd Mining, LLC wrongfully removed 20,212 tons of coal from land belonging to the plaintiff, Peters Farms, LLC. 19,012 tons were mined under Ikerd's mistaken belief as to the correct location of Peters' boundary lines. 1,200 tons were mined pursuant to a disputed oral lease agreement; Peters claimed that the lease was an ongoing negotiation that was never finalized. The 10 trial court found that both incidents qualified as "accidents" constituting "occurrences" within the meaning of Ikerd Mining's Commercial General Liability ("CGL") policy coverage provided by American Mining Insurance Company ("AMIC"). The plaintiff appealed. The Court of Appeals of Kentucky affirmed the trial court's ruling. The Supreme Court of Kentucky granted discretionary review and held that Ikerd's actions were not "accidents" constituting "occurrences" under the CGL policy. The Court emphasized that Kentucky insurance law is governed by the fortuity doctrine, which was not satisfied here because of Ikerd's intent to mine the coal and its control over the mining operation. Accordingly, the Court reversed the Court of Appeals and remanded to the trial court for entry of a judgment consistent with this ruling.

TORTS
Joe Daugherty, et al. v. Bobbi Tabor
2017-SC-000374-DG August 16, 2018
Opinion of the Court by Justice Cunningham. All sitting; all concur. This is a personal injury case where a prospective horse buyer lost control of and was thrown from a horse she was test-riding and sustained injury. The plaintiff, Bobbi Tabor, presented herself as an experienced horse rider and requested to test-ride several horses. The issue presented concerned whether the stable owners and the stable were liable for her injuries under the Farm Animal Activities Act ("FAAA"). The trial court granted summary judgment in the defendants' favor under the FAAA. The plaintiff appealed. The Court of Appeals of Kentucky reversed the trial court's ruling and remanded for further findings of fact. The court found that issues of fact existed regarding defendants' reasonable inquiry into Tabor's riding ability and whether defendant Joe Daughtery or his farm hands contributed to Tabor's injuries in their attempt to halt the out-of-control horse.

The Supreme Court of Kentucky granted discretionary review and held that the FAAA abrogated defendants' liability due to the inherent risks of farm animal activities. Defendants post the appropriate warning signs and conducted prudent inquiry into Tabor's self-proclaimed riding ability before allowing her to test-ride any horses. Accordingly, the Court reversed the Court of Appeals and reinstated the trial court's grant of summary judgment.

Norfolk Southern Railway Company v. Sharon Johnson
2016-SC-000248-DG August 16, 2018
Opinion of the Court by Justice Wright. All sitting. Cunningham, Hughes, Keller, VanMeter, Venters, and Wright, JJ., concur. Minton, C.J., concurs in result only. Sharon Johnson, a patrol officer, was injured during her foot pursuit of a suspect when she fell down an embankment on Norfolk Southern's property. The circuit court granted a directed verdict in favor of Norfolk Southern. Specifically, the circuit court found that the Fireman's Rule barred Johnson's recovery as a matter of law. Johnson appealed to the Court of Appeals, which reversed and remanded to the circuit court, holding that the Fireman's Rule did not bar Johnson's claim. Norfolk Southern filed a motion for discretionary review to the Supreme Court, which the Court granted. The Supreme Court reversed the Court of Appeals, holding that Johnson was barred from recovery pursuant to the Firefighter's Rule and reinstated the circuit court's ruling directing a verdict in favor of Norfolk Southern.

WORKERS COMPENSATION
McCoy Elkhorn Coal Corp. – Insolvent Employer, et al. v. Jeannie Sargent, Etc., et al.
2017-SC-000616-WC August 16, 2018
Opinion of the Court by Justice Hughes. All sitting; all concur. The Administrative Law Judge held statutory beneficiaries of deceased mine worker were entitled to workers' compensation benefits enhanced by 30% pursuant to KRS 342.165 due to employer's failure to comply with workplace safety regulations, and that the Kentucky Coal Employers' Self-Insurers Guaranty Fund, which stepped into the shoes of the insolvent employer, was liable for the 30% enhancement. The Workers' Compensation Board affirmed. On appeal to the Court of Appeals, the Guaranty Fund did not challenge the applicability of the enhancement on the facts presented but did argue that it could not be liable for any enhancement based on the employer's intentional safety violations or interest. 12 The Court of Appeals affirmed the Board. Affirming in a case of first impression, the Supreme Court held that the statutes creating the Guaranty Fund reflected a legislative intent that the Fund step in and fully meet all obligations of the insolvent employer, including the 30% enhancement and interest. The Court specifically rejected the Fund's argument that the 30% enhancement was a "penalty" which the Fund could not be required to pay under KRS 342.910(2)