

Kentucky Court Of Appeals
Cases of Note
[September-October, 2019](#)

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INSURANCE

Warsow v. State Farm Mutual Automobile Insurance Company

[2018-CA-001424](#) 10/04/2019 2019 WL 4892316

Opinion by Judge Spalding; Judges Goodwine and Maze concurred.

This appeal was brought in a declaration of rights action to resolve the question of whether a coverage limitation provision in an insurance contract was void for public policy. Specifically, appellants argued that a single \$50,000 per accident limit was void against public policy when two individuals on the insurance policy committed separate torts to bring about the subject injury. Individually, each insured would have had \$50,000 in liability coverage and appellants argued that limiting that to one recovery of \$50,000 violated public policy. The Court of Appeals held that the provision was not void for public policy because in this matter there was only one vehicle involved driven by one of the policy’s insureds while the other policy insured’s negligence involved the loading of cargo on a trailer that the motor vehicle was pulling. Therefore, the policy limit of \$50,000 for a single incident was not void for public policy reasons.

TORTS

Johnson v. Basil as Next Friend of Johnson

[2017-CA-000986](#) 04/12/2019 2019 WL 1579654 Released for Publication

Opinion by Judge Taylor; Judges Maze and Nickell concurred. Appellants Donna Johnson and Robert Johnson, Jr., co-administrators for the Estate of Steven Paul Johnson, challenged an order directing motor vehicle insurance proceeds to be distributed in toto to Victoria Basil, as guardian and next friend of two minor children, for their claims of loss of parental consortium. After Steven was struck and killed by an automobile, Basil - the mother of his children - filed suit against the driver and the Johnsons’ underinsured motorist carrier for loss of parental consortium. The Johnsons - Steven’s parents - subsequently filed a separate suit to assert a wrongful death claim. Viewing the available motor vehicle insurance proceeds as insufficient to fully compensate the parties’ claims, Basil argued that the insurance proceeds should be allocated to the loss of parental consortium claims to the exclusion of the wrongful death claim. Basil further pointed out that funeral expenses, administrative costs, and recovery costs are not deducted from the insurance proceeds in a loss of parental consortium claim. The circuit court ultimately agreed with Basil and ordered the insurance proceeds to be distributed in toto as compensation for the loss of parental consortium claims. The Court of Appeals concluded that this was error and reversed. The Court held that the claims of loss of consortium were derivative of the wrongful death claim insofar as both derived from the same injury - the wrongful death of Steven. While there were multiple parties and claims, the minor children were the only beneficiaries. Under these unique circumstances, the Court concluded that the claims of loss of consortium were merely an item of damage recoverable for the wrongful death of Steven.

Consequently, all recoverable damages had to be distributed in accord with the requirements of KRS 411.130. Therefore, the Court reversed and remanded for the circuit court to disburse the insurance proceeds to the minor children after payment of funeral expenses, costs of administration, and costs of recovery per KRS 411.130.

Shaw v. Handy

[2018-CA-001280](#) 10/25/2019 2019 WL 5460640

Opinion by Judge Lambert; Judge Maze concurred; Judge Goodwine concurred in result only. This appeal was taken from a CR 12.02(f) order dismissing Shaw's action against Handy for personal injury to Shaw when Handy was serving an eviction notice to her. The circuit court granted Handy's motion to dismiss, finding that Shaw's complaint failed to comply with the one-year statute of limitations set forth in KRS 413.140(1)(a). The Court of Appeals affirmed, holding that: (1) the five-year statute of limitations (KRS 413.120(6)) did not apply because one set of facts established the traditional torts alleged; therefore, intentional or negligent infliction of emotional distress could not be recovered separately (citing Childers v. Geile, 367 S.W.3d 576 (Ky. 2012)); and (2) Shaw's argument concerning the constitutionality of the one-year statute of limitations was not properly before the Court (citing KRS 418.075 and Benet v. Commonwealth, 253 S.W.3d 528 (Ky. 2008)).

WORKERS COMPENSATION

Pine Branch Mining, LLC v. Hensley

[2018-CA-000433](#) 10/18/2019 2019 WL 5275567

Opinion by Judge Dixon; Judges Combs and Taylor concurred. Pine Branch Mining sought review of an opinion of the Workers' Compensation Board affirming in part, reversing in part, and remanding an Administrative Law Judge's award of permanent total disability benefits to Lonnie Hensley. The Court of Appeals affirmed the Board's decision in part, vacated in part, and remanded the matter to the ALJ for further proceedings. The Court held that substantial evidence supported the ALJ's finding of a work-related cumulative trauma injury to Hensley's low back, her finding of permanent total disability, and her determination of Hensley's disability onset date. Most notably, the Court addressed the newly-amended version of KRS 342.730(4) and whether it applied retroactively to Hensley's claim. In House Bill 2, the General Assembly expressly declared the amendment to KRS 342.730(4) applied retroactively to all claims where the injury occurred after December 12, 1996; the claim here was in the appellate process as of July 14, 2018. Thus, the Court concluded that the claim satisfied both conditions for retroactive application of the newly-amended version of KRS 342.730(4). Here, the ALJ erroneously applied the unconstitutional version of KRS 342.730(4) to Hensley's award. The Board correctly reversed that part of the ALJ's decision but erred by remanding the claim for entry of an award pursuant to the 1994 version of the statute. Accordingly, the Court vacated that portion of the Board's opinion and remanded this matter to the ALJ for entry of an award applying the 2018 version of KRS 342.730(4).