

Kentucky Supreme Court
Cases of Note
[November-December, 2020](#)

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EMERGENCY POWERS

Hon. Andrew Beshear, in His Official Capacity as Governor, et al. v. Hon. Glenn E. Acree, Judge, Kentucky Court of Appeals, et al.

[2020-SC-0313-OA](#) November 12, 2020

Opinion of the Court by Justice Hughes. All sitting; all concur. After Governor Andy Beshear declared a state of emergency due to the COVID-19 pandemic and issued additional executive orders and emergency regulations to address public health and safety issues, three Northern Kentucky business owners (Plaintiffs) filed suit in Boone Circuit Court challenging various orders affecting the reopening of their businesses and the Governor’s authority generally in emergencies. The Attorney General intervened, and the parties obtained a restraining order that prohibited enforcement of certain of the emergency orders. After a similar action was filed elsewhere in Scott County, the Supreme Court entered an order on July 17, 2020 staying all injunctive orders directed at the Governor’s COVID-19 response until those orders were properly before the Court. The order authorized the Scott and Boone Circuit Courts to proceed with matters pending before them and issue all findings of fact and conclusions of law they deem appropriate, but no order, however characterized, would be effective. On July 20, 2020 the Boone Circuit Court issued an order that would have granted the temporary injunction against enforcement of the Governor’s orders but for the Court’s July 17 stay order. The Court heard oral argument on September 17, 2020, focused on the legal issues that Plaintiffs and the Attorney General raised in the Boone Circuit Court challenging the Governor’s COVID-19 executive orders and regulations.

The Supreme Court held that (1) the Governor properly declared a state of emergency and validly invoked the emergency powers granted to him in Kentucky Revised Statute (KRS) Chapter 39A; (2) KRS 39A is a constitutional delegation of legislative authority and does not violate the separation of powers provisions of Sections 27 and 28 of the Kentucky Constitution; (3) the Governor was not required to address the COVID-19 emergency solely through regulations pursuant to KRS Chapter 13A; (4) the challenged orders did not violate Sections 1 or 2 of the Kentucky Constitution because the challenged orders were not arbitrary, i.e., lacking a rational basis, except for one subpart of one order regarding social distancing at entertainment venues that initially made no exception for families or individuals living in the same household; and (5) the Boone Circuit Court improperly issued injunctive relief prohibiting enforcement of the Governor’s orders and regulations. The Court lifted the stay as to any affected cases challenging the Governor’s COVID-19 response and allowed those cases to proceed consistent with the Court’s Opinion. As to the Boone Circuit Court litigation, the July 20, 2020 Order that was held in abeyance was reversed and remanded for further proceedings, if any, consistent with the Court’s Opinion.

INSURANCE

Harold Merritt, et al. v. Catholic Health Initiatives, Inc., et al.

2018-SC-0155-DG December 17, 2020

Opinion of the Court by Justice Hughes. All sitting; all concur. Harold Merritt, individually and as administrator of the Estates of Kimberly Merritt and Harold Merritt, III brought a medical negligence action against various health care defendants following the deaths of his wife and newborn son. The Fayette Circuit Court denied Merritt's motion for declaratory relief as to his bad faith insurance claim against First Initiatives Insurance, Ltd., a foreign captive insurance entity that provides self-insurance for Catholic Health Initiatives, Inc. The trial court determined that the Unfair Claims Settlement Practices Acts (UCSPA) does not apply to a captive insurer pursuant to Kentucky Revised Statute (KRS) 304.49-150(1) and granted Catholic Health and First Initiatives' motion for summary judgment, dismissing all claims against them. The Court of Appeals affirmed both rulings, and Merritt sought discretionary review in the Supreme Court. The sole issue before the Court was whether First Initiatives, as a captive insurer, is subject to the UCSPA. KRS 304.12-230. The Court held that the Legislature has clearly and unequivocally excluded captive insurers from the requirements of the UCSPA. First Initiatives was not registered and did not pay taxes in Kentucky, and its principal place of business was in the Cayman Islands. Further, First Initiatives was not in the business of insurance as it only provided captive self-insurance for Catholic Health, with no risk shifting or risk distribution. Additionally, the trial court did not abuse its discretion in denying Merritt further discovery because Merritt represented the issue was ripe for decision in his motion for declaratory judgment, and further discovery could have no effect upon the determination that First Initiatives was a foreign captive insurer.