

Kentucky Court Of Appeals
Cases of Note
May-June, 2021

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

ETHICARE ADVISORS, INC. VS. NANCY G. ATKINS IN HER CAPACITY AS COMMISSIONER OF THE KENTUCKY

2019-CA-1889, 2019-CA-0024 05/28/2021 2021 WL 2172552

Opinion by CLAYTON, DENISE G.; CALDWELL, J. (CONCURS) AND COMBS, J. (CONCURS)

EthiCare Advisors, Inc. entered into a contract with Kentucky Health Cooperative, Inc. (KYHC), a health maintenance organization, to provide negotiated claims settlement services for a fee consisting of a percentage of the savings it negotiated on KYHC’s behalf. KYHC was subsequently placed into Rehabilitation under Kentucky’s Insurers Rehabilitation and Liquidation Law, KRS 304.33-010 et. seq. (IRLL). In accordance with the circuit court’s Rehabilitation Order, EthiCare continued to provide negotiated settlement services during the Rehabilitation period. KYHC was later found insolvent and placed into Liquidation. Two issues arose regarding EthiCare’s claim against the estate: first, whether EthiCare was entitled to claim the full amount of its fees generated during the Rehabilitation period or only the amount derived from claims actually paid by KYHC, and second, which priority class would EthiCare’s claim fall into under KRS 304.33-430. The Court of Appeals affirmed the circuit court’s ruling that EthiCare was entitled to the entire amount of its claim because it performed fully under its contract with KYHC and in compliance with the Rehabilitation Order. It reversed the circuit court’s ruling that the portion of the fees derived from claims actually paid by KYHC should receive first priority under KRS 304.33-430(1) as an administration cost, ruling instead that the entire claim fell within the sixth “residual class” because administration costs did not include normal, day-to-day expenses associated with a course of business that would occur whether or not KYHC was in Rehabilitation or Liquidation. Although the Rehabilitation order directed EthiCare to continue to provide services to KYHC, it did not transform those contractually mandated services into a cost of administration.

WORKERS COMPENSATION

TRACTOR SUPPLY COMPANY VS. PATRICIA WELLS, ET. AL.

2021-CA-0296 06/25/2021 2021 WL 2614063

Opinion by THOMPSON, LARRY E; CALDWELL, J. (CONCURS) AND DIXON, J. (CONCURS) The Court of Appeals affirmed an award of permanent partial disability benefits. The Court also held that the administrative law judge in this case did not err when it awarded Patricia Wells the three-multiplier found in Kentucky Revised Statutes (KRS) 342.730(1)(c)1. The ALJ held that because Ms. Wells could not return to the type of work she performed before her workplace injury, she was entitled to the three-multiplier. Tractor Supply argued that she wasn’t entitled to the three-multiplier because she was later fired for misconduct. Tractor Supply relied on the holding in Livingood v. Transfreight, LLC, 467 S.W.3d 249 (Ky. 2015), which

stated that an employee who is terminated for “conduct shown to have been an intentional, deliberate action with a 4 reckless disregard of the consequences either to himself or to another[,]” is not entitled to the two-multiplier found in KRS 342.730(1)(c)2. The Court in this case determined that the holding in Livingood did not apply to the three-multiplier. The Court concluded that the two-multiplier only applied when an employee left his or her employment and restricting the multiplier when an employee is terminated for reckless misconduct is reasonable. The Court further held that the three-multiplier only concerns the physical ability to return to the type of work done pre-injury and has nothing to do with an employee leaving employment; therefore, an employee’s termination for misconduct is irrelevant.