

# **Kentucky Supreme Court**

## **Cases of Note**

### **September-October, 2021**

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”.

## **INSURANCE**

### **James D. Nichols v. Zurich American Insurance Company**

**2020-SC-0284-DG September 30, 2021**

Opinion of the Court by Justice VanMeter. All sitting; all concur. Nichols appeals the decision by the Jefferson Circuit Court and affirmed by the Court of Appeals finding that Zurich Insurance had a reasonable basis for denying Nichols’ claim for underinsured motorists benefits under the commercial policy purchased by Miller Pipeline. Nichols argued that Zurich’s failure to respond to his Coots notice, its subsequent delays in negotiating a settlement with him, and its attempt to retroactively amend the insurance policy nearly three years after the accident occurred constituted bad-faith under the UCSPA and common law principles of good faith and fair dealing. KRS 304.12-230; *Indiana Ins. Co. v. Demetre*, 527. S.W.3d 12, 26 (Ky. 2017). Zurich countered, arguing that because Miller did not intend to purchase the UIM, Zurich acted reasonably when it denied Nichols’ claim and retroactively amended the policy. The Supreme Court held that Zurich’s claim of mutual mistake was not reasonable because the contract between Zurich and Miller Pipeline was clear and complete. Moreover, Zurich’s failure to meaningfully engage with Nichols in settlement discussions and its attempt to add a UIM rejection to the original policy violated KRS 304.12-230(1, 2, 5). Additionally, the Supreme Court held that Nichols is entitled to the internal Zurich documents relating to its initial denial of Nichols’ claim because of the extraordinary delay between Nichols’ notice to Zurich and Zurich taking any action in the matter.

## **TORTS**

### **Leshai Phelps v. Bluegrass Hospitality Management, LLC**

**2019-SC-0613-DG September 30, 2021**

Opinion of the Court by Justice Nickell. All sitting; all concur. Phelps slipped and fell at a restaurant managed by Bluegrass Hospitality Management, then filed a premises liability claim. After about two years of discovery had taken place, Fayette Circuit Court granted Bluegrass Hospitality Management’s motion for summary judgment. On appeal, the Court of Appeals affirmed the grant of summary judgment citing two grounds. First, the condition of the floor was open and obvious to Phelps. Second, Phelps had failed to produce sufficient evidence of negligence by BGH to establish a material issue of fact existed. On discretionary review, the Supreme Court first held Phelps failed to produce proof of a material fact—that being any evidence of a hazardous condition on BGH’s premises. Phelps would have needed some corroborative proof beyond her own speculative testimony and belief to create a material issue of fact. Second, the Supreme Court 6 agreed with Phelps the Court of Appeals had misapplied the open and obvious doctrine as an alternative ground to grant summary judgment in her case, but this did not rise to the level of reversible error. Under a comparative fault system of negligence

like Kentucky has now, the open and obvious nature of a hazard is only a circumstance the trier of fact can consider in apportioning fault. Only in rare instances where a plaintiff's conduct in the face of an open and obvious hazard is so clearly only the fault of plaintiff's injury is summary judgment warranted.

**Craig Bramlett, et al. v. Arnold J. Ryan, Jr., et al.**

**2020-SC-0232-DG September 30, 2021**

Opinion of the Court by Chief Justice Minton. All sitting; all concur. Craig Bramlett and Stephanie Cline, individually and as co-administrators of the estate of Landon Bramlett, brought a tort action in Pike Circuit Court against A.J. and Pam Ryan alleging negligent operation of the Ryans' residential swimming pool, negligent supervision, and gross negligence resulting in the drowning death of Landon Bramlett, which occurred at a pool party hosted by the Ryans at their home. The circuit court granted summary judgment in favor of the Ryans, finding that the Ryans owed no duty to warn Landon of the danger posed by swimming in the pool and finding that the Ryans fulfilled any duty owed to supervise and control the conduct of the children present at the pool party. The Court of Appeals affirmed. The Kentucky Supreme Court accepted discretionary review to determine the applicability of the common law distinctions of licensee and invitee in identifying the scope of duty owed by the Ryans to the Bramletts. The Court first determined that disputes of material fact existed as to the conditions and circumstances surrounding Landon's death, and those disputed facts were sufficient to convince a reasonable jury that the Ryans breached their duty, whatever it may be, to Landon. As such, the Court held that the trial court erred in granting summary judgment. The Court next held that a property owner owes a reasonable duty of care to guests invited to her property to participate in an activity. The Court specified that the determination of the existence of a duty is still a legal question for the trial court to determine. However, the court need only consider (1) whether the property owner invited or ratified the presence of the guest on the premises, and (2) whether the guest was injured or harmed in the course of or as a result of an activity taking place on the premises. If both requirements are met, the property owner owes a duty of reasonable care to the guest as a matter of law. Accordingly, the Court reversed the Court of Appeals and remanded the case to the circuit court for further proceedings.

**WORKERS COMPENSATION**

**Wonderfoil, Inc. v. Richard Russell, et al.**

**2020-SC-0301-WC September 30, 2021**

Opinion of the Court by Justice Keller. All sitting; all concur. Richard Russell sustained a work-related injury while employed by Wonderfoil, Inc. He initiated a claim for benefits pursuant to Kentucky Revised Statutes (KRS) Chapter 342, the Workers' Compensation chapter. An Administrative Law Judge (ALJ) granted permanent partial disability (PPD) benefits to Russell but found certain medical expenses were submitted untimely and were therefore non-compensable. Russell 7 appealed the ALJ's denial of those medical expense benefits to the Workers' Compensation Board (the Board). The Board reversed the ALJ finding the expenses were submitted timely. Wonderfoil then appealed to the Court of Appeals, which affirmed the Board's decision. The Supreme Court interpreted 803 KAR 25:096, § 11 by viewing it in the context of the entire workers' compensation regulatory scheme. The Court concluded that the regulatory scheme governing workers' compensation claims anticipates that medical expenses will be provided to the employer pre-award and throughout the litigation of the claim. It held that 803 KAR 25:096, § 11's application only post-award best effectuates the intent of the

Commissioner of the Department of Workers' Claims and prevents an absurd result. In so doing, the Court affirmed the Court of Appeals.

**Time Warner Cable, Inc. v. Ricky Smith, et al.**

**2020-SC-0580-WC October 28, 2021**

Opinion of the Court by Justice Conley. All sitting; all concur. In this case, the ALJ concluded Ricky Smith was totally, permanently disabled. Time Warner appealed arguing the ALJ improperly concluded total disability based solely upon evidence of 5 Smith's psychological conditions, and that no substantial evidence supported the judgment as Smith did not have any psychological restrictions placed upon him by a doctor. The Court of Appeals affirmed the ALJ. The Supreme Court affirmed the Court of Appeals. It held as a matter of first impression that a claimant can testify to the extent and duration of his psychological injuries, but cannot make a diagnosis, and an ALJ may rely upon such testimony in making an award of total disability so long as evidence supports the psychological condition is a direct result of a physical work injury. In this case, medical evidence did support the ALJ's conclusion. Finally, the Supreme Court reiterated the holding and import of *Ira A. Watson Dept. Store v. Hamilton*, 34 S.W.3d 48 (Ky. 2000), that a finding of disability is a holistic analysis of several factors, some of which are not named in the statutory scheme but nonetheless remain viable.