

**Kentucky Supreme Court**  
**Cases of Note**  
**May-June, 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”.

**Note: No Court in May**

## **INSURANCE**

**Crystal Lee Mosley, et al. v. Arch Specialty Insurance Company, et al.**  
**2018-SC-0586-DG June 17, 2021**

Opinion of the Court by Chief Justice Minton. All sitting; all concur. The Kentucky Supreme Court accepted discretionary review in this third-party bad-faith case to determine whether Arch Specialty Insurance Company and National Union Fire Insurance Company acted in bad faith while mediating negligence and wrongful death claims asserted by Crystal Lee Mosley against insureds of Arch and National Union after her husband’s death in a coal mining accident. The trial court summarily dismissed bad-faith claims against both companies, finding that the Plaintiffs had failed to state a claim for which relief could be granted, as well as failed to prove a genuine issue of material fact existed. Further, the trial court found that any evidence of National Union’s and Arch Specialty’s bad faith conduct would be inadmissible under Kentucky Rule of Evidence 408 because it was mediation conduct. The Court of Appeals affirmed. On discretionary review, the Supreme Court affirmed the decision of the Court of Appeals but found that evidence of bad faith conduct is admissible under KRE 408, but not in this instance because the Plaintiffs had failed to show any evidence would reveal prohibited bad faith conduct.

**Note: IIK filed an amicus brief in this case.**

**Julie G. Thomas, Individually, et al. v. State Farm Fire and Casualty Company, et al.**  
**2020-SC-0061-DG June 17, 2021**

Opinion of the Court by Justice VanMeter. All sitting; all concur. While operating a home day care center Bessie Perkins injured two children, S.T. and C.R. The issue before the Court was whether the child care services exclusion in the Perkins’s home insurance policy operated to exclude coverage not only for Bessie, but her husband as well. The Supreme Court held that the term “any insured” broadened the exclusion to include injuries triggered by one insured in connection with the activities of another. Consequently, the Supreme Court affirmed the Court of Appeals opinion which affirmed the Madison Circuit Court’s grant of summary judgment in favor of State Farm.

## **LIMITATION OF ACTIONS**

**United States Liability Insurance Company v. Jaci Watson, as Administrator of the Estate of William Gerald Watson, Deceased**  
**2019-SC-0475-DG June 17, 2021**

Opinion of the Court by Justice Hughes. All sitting. Minton, C.J.; Conley, Keller, Nickell, and VanMeter, JJ., concur. Lambert, J., dissents by separate opinion. Civil Appeal, Discretionary

Review Granted. After William G. Watson settled his dram shop claim against Pure Country, LLC, an establishment insured by United States Liability Company (USLI), he made a bad faith claim against USLI pursuant to Kentucky's Unfair Claims Settlement Practices Act. The trial court ultimately concluded the claim was barred by the five-year statute of limitations because Watson's claim against Pure Country was settled before August 9, 2012, the date five years before the filing of the bad faith claim. The Court of Appeals reversed the trial court, perceiving the settlement to have occurred in December 2012, making Watson's August 2017 bad faith claim timely. Held: The trial court correctly concluded that Watson's bad faith claim against USLI was barred by the statute of limitations. The facts of the case support the trial court's finding regarding a binding settlement more than five years before the filing of the bad faith claim because the essential elements of an enforceable contract were present no later than July 30, 2012.

## **MOTOR VEHICLE REPARATIONS ACT**

### **Linda Davis v. Progressive Direct Insurance Company**

**[2020-SC-0168-DG](#) June 17, 2021**

Opinion of the Court by Justice VanMeter. All sitting. Minton, C.J.; Conley, Hughes, Keller, Nickell and VanMeter, JJ., concur. Lambert, J., dissents without separate opinion. While driving her motorcycle, Linda Davis collided with a horse-drawn wagon. The issue before the Court was whether a horse-drawn wagon qualified as either a "motor vehicle" or a "trailer." The Supreme Court held that horse-drawn wagons failed to meet either definition because the horse and buggy operate as a single integral unit and is muscle powered. Additionally, the Court held that Kentucky's Motorized Vehicle Reparations Act does not include horse-drawn wagons within its definition of "motor vehicle." Consequently, the Supreme Court affirmed the Court of Appeals opinion affirming the Wayne Circuit Court's grant of summary judgment in favor of the insurance company.

## **WORKERS COMPENSATION**

### **Clara Susan Sheets, Executrix of the Estate of Steven Ray Sheets v. Ford Motor Company**

**[2019-SC-0208-DG](#) June 17, 2021**

Opinion of the Court by Justice Keller. All sitting; all concur. VanMeter, J., concurs by separate opinion in which Nickell, J., joins. Steven Ray Sheets filed suit against Ford Motor Company alleging Ford was one of multiple parties responsible for causing his malignant mesothelioma. Ford filed a motion for summary judgment arguing, among other things, that it was immune from tort liability as an "up-the-ladder," or statutory employer, under Kentucky Revised Statute (KRS) 342.610(2)(b) of the Kentucky Workers' Compensation Act (Act). The trial court denied its motion for summary judgment in a one-sentence order. Ford appealed arguing it had a matter of right appeal on this issue under Ervin Cable Construction, LLC v. Lay, 461 S.W.3d 422 (Ky. App. 2015). Sheets argued that the trial court's order denying summary judgment was interlocutory and not appealable. 10 The Supreme Court held that all three elements of the collateral order doctrine must be met before an appellate court has jurisdiction to review an interlocutory order. The three elements are as follows: the interlocutory order must (1) conclusively decide an important issue separate from the merits of the case; (2) be effectively unreviewable following final judgment; and (3) involve a substantial public interest that would be imperiled absent an immediate appeal. The Court went on to hold that the trial court's denial of up-the-ladder immunity in this case did not involve a substantial public interest that would be

imperiled absent an immediate appeal. Accordingly, the Court lacked jurisdiction to hear the appeal. The Court expressly overruled Ervin Cable's holding that under the collateral order doctrine, an appellate court has jurisdiction to review a trial court's denial of a motion for summary judgment based on up-the-ladder immunity.

**Glenn Davis v. Blendex Company, et al.**

**2020-SC-0171-WC June 17, 2021**

Opinion of the Court by Justice Lambert. All sitting; all concur. The employee's right foot was injured after being sprayed with a heated pressure washer. The employee missed a total of five days of work. Then, the employee, who previously worked fulltime, was medically released to return to part-time work with limited duties. The employee elected to use his previously accrued paid time off and vacation hours to supplement his part-time income in lieu of seeking workers' compensation benefits and receiving only a portion of his salary. The employer presented a settlement offer to the employee based on an impairment rating from one of his treating physicians one year and five months prior to the expiration of the statute of limitations. The employee rejected this offer. The employer later gave the employee a weeks' notice that his statute of limitations was about to expire. The employee did not file his claim until four months after the statute of limitations expired. The Court held that the employee "returned to work" as that phrase is used in KRS 342.0011(11)(a) and interpreted in *Trane Commercial Systems v. Tipton*, 481 S.W.3d 800 (Ky. 2016). As a matter of first impression, the Court held that a full-time employee who returns to part-time work due to a work-related injury, alone, does not constitute an "extraordinary circumstance" that warrants an award of temporary total disability benefits under Tipton. The Court also held that the employee's use of previously accrued paid time off and vacation hours to supplement his income did not entitle him to temporary total disability benefits. The Court reasoned that the employee chose to use those hours instead of taking a reduction in salary, and that there was no evidence that the employer, for example, fraudulently induced or coerced him into doing so. Finally, the Court held that equitable principles did not otherwise require the statute of limitations to be tolled. The Court explained that the employer did not fail to meet its notification requirements under KRS 342.040(1), as the employee did not miss seven days of work. And, the employee was apprised of both his right to file a claim and the date that his statute of limitations would run.