

Kentucky Court of Appeals
Cases of Note
[November-December, 2008](#)

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

Lawson v. American Bankers Life Assurance Co. of Florida

[2007-CA-000033](#) 2/15/08 2008 WL 399558 Rel for pub 12/22/08

Opinion by Senior Judge Knopf; Judges Caperton and VanMeter concurred. The Court affirmed a summary judgment of the circuit court dismissing appellant’s claim against appellee for failing to refund premiums for credit life insurance. The Court held that KRS 304.19-090(2) did not entitle appellant to a refund of the premium paid in advance. There was no premium refund due because when appellee assumed the risk of appellant’s spouse’s death, the premium paid for the assumption of the risk was earned. Since appellee paid the death claim and the policy did not state otherwise, it was not required to refund premiums for the remaining months of the policy. The Court also held that KRS 304.19-069 did not entitle appellant to a refund

TORTS

Thomas v. St. Joseph Healthcare, Inc.

[2007-CA-001192](#) 12/5/08 2008 WL 5102119 DR filed 1/5/09

Opinion by Judge Wine; Judge Clayton concurred; Judge Dixon concurred in result only. The Court affirmed in all respects, except for the award of punitive damages, a judgment of the circuit court on an estate’s claim against a hospital for negligence and under the Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. § 1395dd. The Court first held that claims under EMTALA and for medical negligence were not mutually exclusive and therefore, the Estate’s claim asserting a medical negligence claim did not automatically preclude it from bringing a claim under EMTALA. The Court then held that the Estate presented sufficient evidence to support a claim under EMTALA and that the duty to stabilize a patient under EMTALA did not require that the hospital have actual knowledge of a specific condition but that the duty arose upon the hospital’s determination that the deceased was manifesting symptoms of sufficient severity as to constitute an emergency medical condition. The Court then held that, based upon the evidence and testimony of the Estate’s expert witnesses, the jury could conclude that the Hospital released the deceased even though the doctors knew his condition was not stable and was likely to deteriorate. The Court also held that the jury instruction on the EMTALA claim was substantially correct and not materially misleading as it implicitly required the jury to find that the hospital’s physicians had knowledge of the deceased’s emergency medical condition. The Court next held that the trial court properly submitted the negligence claim to the jury, as the testimony of the Estate’s nursing expert and medical expert was sufficient to show that any negligence by the Hospital was a substantial factor in causing injury to the deceased. The Court then held that the trial court did not err by denying the hospital’s motion *in limine* to preclude any award of unliquidated damages, as prohibited by *Fratzke v. Murphy*, 12 S.W.3d 269 (Ky. 1999). Under the circumstances, while the Estate failed to specify the amount of its claim for unliquidated damages prior to the first trial, after that trial ended in a mistrial, the trial court could reasonably find that the Estate seasonably identified its claim for such damages with respect to the second trial. The Court next held that the hospital was not

entitled to a new trial based upon a series of issues involving the conduct of the trial, as overall, the hospital was not deprived a fair trial, did not show how it was prejudiced by any of the claimed errors, and/or failed to properly object at trial. These alleged errors included the denial of motions to strike jurors for cause; the denial of a motion to exclude deposition testimony based upon erroneous information that a settlement with the treating physicians contained a term preventing their experts from testifying for the hospital; the admission of inconsistent testimony of an expert witness; the introduction of an expert's deposition testimony regarding nursing care; the reference to a social worker's note suggesting that the police should be called if the deceased continued to return to the hospital; the statement by counsel that jurors should use their own knowledge, life experiences and values in the deliberation process; counsel's references to the deceased's past and family relationships to evoke sympathy; the holiday scheduling of the trial; and the hospital's opportunity to cross-examine or impeach several fact witnesses. The Court also held that the jury's questions about the distinctions between negligence and EMTALA claims did not show that it was confused or misled by the instructions. Further, the verdicts were not inconsistent, even though only nine jurors found the Hospital to be negligence but ten agreed with the verdict apportioning fault and assessing punitive damages. The Court then held that the issue of whether the trial court erred in denying the hospital's motion to compel production of the settlement agreement with the physicians was unpreserved, as the hospital did not object to the order sealing the settlement agreement and did not request more specific findings addressing any allegedly improper provisions in the agreement. The Court next held that, while the issue of whether the hospital ratified the grossly negligent conduct of its employees was a question of fact for the jury pursuant to KRS 411.184(3), the trial court erred by failing to provide such a ratification instruction and by failing to instruct the jury that the Estate was required to prove its right to punitive damages by clear and convincing evidence. Because the Court reversed for a new trial on punitive damages, it addressed the issue of the amount of the punitive damage award and held that given the enormous disparity between the compensatory and punitive damages, the award was excessive. The Court noted the KRS 411.186(2) set out the standards for a jury to consider in awarding punitive damages and that separate instructions may be appropriate for each of the applicable factors.

WORKERS' COMPENSATION

Comair, Inc. v. Helton

[2007-CA-002332](#) 11/14/2008 2008 WL 4911195

Opinion by Judge Nickell; Judges Clayton and Taylor concurred. The Court affirmed an opinion of the Workers' Compensation Board reversing in part, vacating in part and remanding an opinion, order and award of benefits by the ALJ to a worker for a work-related knee injury. The Court held that the Board correctly concluded that appellant failed to prove that the worker's preexisting arthritic changes in both knees were active and impairment-ratable immediately prior to the work injury. The medical opinions relied on by the ALJ were silent on the issue and the other medical opinions clearly indicated that the degenerative changes were dormant and asymptomatic prior to the work injury. Therefore, the entirety of the worker's impairment due to the knee injury was compensable.