

Kentucky Court of Appeals
Cases of Note
March-April, 2010

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TORTS

Keeney v. Osborne

2007-CA-002112 03/05/2010 2010 WL 743671 Rehearing Pending

Opinion by Judge Clayton; Judge Moore concurred; Judge Stumbo dissented in part by separate opinion. The Court affirmed in part, vacated in part, and remanded a judgment of the circuit court based on a jury verdict against an attorney awarding his client compensatory and punitive damages of more than \$5.1 million on her claim for negligent representation. The client retained the attorney to represent her in an action against an airplane pilot who crashed his airplane into her home. The action against the airplane pilot was dismissed on statute-of-limitations grounds. The Court held that the client raised a viable claim of legal negligence. The Court also held that the jury had sufficient evidence to establish damages for personal property plus evidentiary support for the award of punitive damages in the malpractice case. However, the Court did not reach the issue of lost punitive damages in the airplane crash because clear and convincing evidence was not provided to demonstrate the requisite actions on the pilot’s part warranting punitive damages. The Court also held that, without physical impact, Kentucky law did not allow for an award of damages for emotional distress for both the underlying case and the case itself. The Court also held that there was sufficient evidence on the record for the jury to believe the attorney’s conduct was fraudulent in order to support an award for legal fees and costs. The Court also held that, based on the requisites of CR 8.02(2), the client was limited to punitive damages in the amount in the last itemization of such damages in her trial memorandum. The Court finally held that the trial court did not have jurisdiction to allow the client to amend her complaint nineteen days after the entry of the judgment in order to add the attorney’s insurer as a defendant and to add claims against the insurer under KRS 304.12-230, the Unfair Claims Settlement Practices Act, KRS 367.170 and Kentucky common law for bad faith conduct in refusing to settle the case.

Rawlings v. Interlock Industries, Inc.

2008-CA-001616 03/19/2010 2010 WL 1006853

Opinion by Judge Caperton; Judge Dixon and Senior Judge Henry concurred. The Court affirmed in part and reversed in part and remanded a summary judgment entered in favor of appellees on appellant’s claims for injuries he received while he was rolling up the straps on his tractor-trailer after a delivery. The trial court found that the claims were barred by the one-year statute of limitations found in KRS 413.140(1) for personal injuries. The Court first held that summary judgment was improper as appellant’s claims were properly brought under the Motor Vehicle Reparations Act (MVRA), contained in KRS 304.39, and therefore, the corresponding two-year statute of limitations in KRS 304.39-230 was applicable. Because appellant was preparing his vehicle for return to the roadway and was neither removing or securing a load when he was struck by an aluminum bundle falling from a forklift, his actions were not integral to the unloading of the tractor-trailer and thus, did not constitute unloading within the meaning of KRS 304.39-020(6). The Court next held that because there were no findings by the trial court on cross-appellant’s alternative theory that there was no evidence of negligence on its part, the issue was not properly before the Court. The Court finally held that the trial court did not abuse its discretion by excluding the testimony of appellee’s expert witness when it failed to comply with a pretrial discovery order. It was apparent

from the trial court's order rescheduling the trial date that the original discovery deadlines were unaffected.

WORKERS COMPENSATION

Gardner v. Vision Mining, Inc.

[2009-CA-000874](#) 4/9/2010 2010 WL 1404661

Opinion by Senior Judge Lambert; Judge Wine concurred; Judge Keller concurred in part and dissented in part by separate opinion. The Court reversed and remanded an opinion of the Workers' Compensation Board affirming the dismissal of the appellant worker's claims after two physicians reached a consensus, pursuant to KRS 342.316(3)(b)4.f, that the worker was negative for coal workers' pneumoconiosis (CWP). The Court held that KRS 342.316, as applied to coal workers, was unconstitutional. The Court concluded that there was no rational basis for imposing a different procedure and a higher burden on CWP claimants than on other occupational pneumoconiosis claimants. Therefore, the statute was unconstitutional insofar as it required the three-member consensus panel and imposed a higher burden of proof