Kentucky Supreme Court
Cases of Note
January -February, 2010

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 cases posted for February.

INSURANCE

Veronica Jewell v. Kentucky School Board Association
2008-SC-000244-DG January 21, 2010
Opinion by Justice Venters; all sitting. Jewell was injured in a motor vehicle accident while working as a school bus monitor. After settling with the tortfeasor, Jewell filed suit against the school board's self-insurance trust for the under-insured motorist coverage. The jury awarded Jewell $101,000 from which the trial court deducted $25,000 representing the amount paid by the tortfeasor's liability carrier and $333.45 for basic reparation benefits (BRB) already paid by the Appellee. The Court of Appeals increased the BRB deduction to $20,000, reflecting the amount available, rather than the amount actually paid. The Supreme Court reversed, holding that under CR 52.04, that issue was not properly appealed to or reviewable by the Court of Appeals. However, the Supreme Court affirmed the Court of Appeals decision that the UIM carrier was entitled to an offset for workers compensation benefits paid on Jewell's behalf. It also affirmed the Court of Appeals' ruling that Jewell's attorney's fees and expenses could not be credited against the deductions made from the damages award. Justice Scott concurred in result only, asserting that the legislature did not intend for BRB payments that were never paid to be offset against damage awards.

TORTS

Associated Insurance Service, Inc. & AON Risk Services, Inc. of Ohio v. Daniel Garcia, MD & Rita Garcia
2008-SC-000037-DG January 21, 2010
2008-SC-000044-DG January 21, 2010
Opinion by Justice Cunningham; all sitting. The Garcias suffered serious injuries aboard "The Star of Louisville," an Ohio River based pleasure craft, and subsequently filed a personal injury suit. The Star was insured by HIH; the Star was referred to HIH by the Star's insurance agency, Associated Insurance, who, in turn, had solicited a quote from AON Risk Services—an insurance broker. While the suit was pending, HIH because insolvent and unable to satisfy any judgment that might be obtained. The Garcias and the Star agreed to arbitration and in their subsequent agreement: 1) the Star admitted liability for $742,193.10 in damages 2) the Garcias agreed to dismiss their civil suit without prejudice and to forebear collection of the arbitration award; and 3) the Star assigned its claims against Associated Insurance and AON to the Garcias. The Garcias then filed suit against Associated Insurance and AON. The circuit court granted summary judgment to the defendants, holding that tort action are generally not assignable in Kentucky and that public policy disfavors assignment of professional negligence claims. The Court of Appeals reversed summary judgment, but held that the arbitration award was not binding upon Associated Insurance and AON since they were not parties to the arbitration.

In a case of first impression, the Supreme Court held that professional negligence claims against insurance agents and brokers are assignable and do not violate public policy. The Court noted that under Kentucky law, tort claims arising from contractual relationships are generally assignable. The Court recognized that professional negligence claims against attorneys are not assignable, but distinguished between the natures of the attorney-client relationship and the relationship between insurance agent and its customer. The Court further held that upon remand the Garcias should bear the burden of presenting prima facie evidence of the reasonableness of the arbitration award which Associated Insurance and AON would be afforded an opportunity to rebut. Justice Noble concurred by separate opinion. Justice Schroder would have affirmed the Court of Appeals.

Robert M. Blankenship, MD & Caritas Health Services Inc., dba Caritas Medical Center v. Horace Collier
2007-SC-000916-DG January 21, 2010
2007-SC-000921-DG January 21, 2010
Opinion by Justice Abramson; all sitting. Collier filed a medical malpractice lawsuit, alleging negligence in the diagnosis and treatment of his appendicitis. Over a year after the suit was filed, Collier still had not identified an expert witness to establish causation even after being granted extra time to do. The trial court subsequently granted the defendants' request for summary judgment as a matter of law under CR 56. The Court of Appeals reversed, holding that the trial court must first make a separate ruling on the necessity of such expert testimony.

The Supreme Court held that where a plaintiff creates a legitimate dispute about the need for an expert witness, the trial court must make a separate finding regarding the need for such testimony. However, where the need is never disputed by the plaintiff, no separate ruling must be made by the trial court before considering defendant's motion for summary judgment. The Court concluded that since Collier had never disputed the need for expert testimony, the trial court did not abuse its discretion in granting summary judgment. Chief Justice Minton dissented contending that the CR 56 motions in this case were not "adequately particularized and supported" to justify an award of summary judgment. Justice Scott, joined by Justice Venters, also dissented, asserting that the majority's opinion represented a shift towards the federal summary judgment standard and away from the standard adopted by the Court in Steelvest. Justice Venters also dissented, contending that the majority had shifted the burden for summary judgment in medical malpractice actions from the movant onto the respondent.