Kentucky Supreme Court
Cases of Note
March -April, 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

Cincinnati Insurance Company v. Motorists Mutual Insurance Company
2008-SC-000293-DG March 18, 2010
Opinion by Chief Justice Minton. All sitting; all concur. Homebuyers sued builder claiming their house was built so poorly it was beyond repair. After settling with the homeowner and the builder, Motorists—the builder's commercial general liability (CGL) carrier at the time the home was built-- filed suit against Cincinnati Insurance, the builder's present CGL carrier, alleging it breached its duty to defend and indemnify the builder from the buyers' claims. The trial court awarded summary judgment to Cincinnati Insurance, holding that the homebuyers' claims did not qualify as an "occurrence" under the language of the CGL policy. The Court of Appeals reversed, holding that damage to the house was clearly property damage caused by an "occurrence" since the damage was accidental—not intentional. The Supreme Court reversed the Court of Appeals holding that faulty workmanship alone does not constitute an "occurrence" under a CGL policy.

TORTS

Ira E. Branham; Miller Kent Carter; Branham & Carter, PSC v. Elizabeth Stewart (Guardian)
2007-SC-000250-DG March 18, 2010
Opinion by Chief Justice Minton; all sitting. Guardian for incompetent adult filed legal malpractice and breach of fiduciary duty claims against attorney that previously represented the ward in a tort action when he was a minor. The attorney argued that he had no duty to the minor, only the minor's mother who hired the attorney to act as next friend to the minor. The trial court granted summary judgment to the attorney, holding such a cause of action had never been recognized under Kentucky law. The Court of Appeals reversed. The Supreme Court affirmed the Court of Appeals, holding in these types of situation, there is an attorney-client relationship between the minor or ward. The Court rejected the attorney's argument that he should not be held responsible since the District Court failed to require a surety from the minor's mother when she was appointed statutory guardian. Justice Scott, joined by Justice Cunningham, dissented, contending that the ruling would make cases involving guardianships expensively complex. The minority contended the change in law was unjustified since the guardian/ward relationship is already closely supervised by the courts.

Sprint Communications Co. LP v. Albert E. Leggett, III (Trustee)
2005-SC-001023-DG March 18, 2010
2007-SC-000273-DG March 18, 2010
Opinion by Justice Venters. Special Justice Garvey and Special Justice Griese sitting for the Chief Justice and Justice Abramson; all concur. After negotiations were unsuccessful, Sprint filed suit to take Leggett's property by eminent domain. Leggett filed a counterclaim, alleging abuse of process and malicious prosecution. After Sprint withdrew its eminent domain claim, the circuit court awarded Sprint summary judgment on Leggett's counterclaims. In reversing, the Supreme Court held summary judgment was improper because Leggett had presented adequate evidence of the elements of abuse of process (1. ulterior purpose 2. willful act in the use of process not proper in the regular conduct of the proceeding). The Court held that sprint had an "ulterior purpose" for filing their suit—i.e. using the burden and expense of condemnation to pressure Leggett into selling his land for less than he would obtain by a valid condemnation. As for the second element, the Court held that abuse of process does not require that the willful act occur subsequent to the issuance of the process. The Court noted that under KRS 278.540, telecommunications companies such as Sprint cannot acquire total control of private property though condemnation.

Fluke Corporation v. Gary LeMaster & Larry LeMaster
2008-SC-000530-DG March 18, 2010
Opinion by Chief Justice Minton. All sitting; all concur. The LeMasters were injured in an electrical explosion while servicing a piece of coal mining machinery. They sued the machine's owner for negligence in wiring and labeling the machine. The LeMasters later amended their complaint to include Fluke—the manufacturer of the voltage meter that showed the machinery was not charged prior to the explosion. The trial court awarded summary judgment to Fluke, finding LeMasters' claims were time-barred by the applicable statute of limitations. The Court of Appeals reversed, relying on an opinion of the Alaskan Supreme Court, Palmer v. Borg-Warner. The Court of Appeals held that Fluke was equitably estopped from relying upon the statute of limitations because Fluke failed to comply with its duty to report potential safety hazards under the Consumer Product Safety Act.

The Supreme Court reversed the Court of Appeals and reinstated the trial court's award of summary judgment. The Court held that the "discovery rule" did not apply to toll the statute of limitations since the voltage meter's potential role in causing the injuries was immediately evident or discoverable with the exercise of reasonable diligence. The Court also determined that the Court of Appeals ignored binding Kentucky precedent when it expanded the doctrine of equitable estoppel to the "expansive view" adopted by the Alaskan Supreme Court. The Court further held that the LeMasters could not show the detrimental reliance necessary to establish equitable estoppel. Lastly, the Court noted that Kentucky law has never held that failure to report potential problems to the Consumer Protection Safety Council constitutes fraudulent concealment or excuses the plaintiff's duty to exercise due diligence.