

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

TORTS

CSX Transportation v. Troy Moody

[2007-SC-00548-DG](#) May 20, 2010

[2009-SC-000048-DG](#) May 20, 2010

Opinion of the court. All sitting; all concur. Former employee brought a Federal Employers Liability Act (“FELA”) suit against CSX, claiming he suffered from toxic encephalopathy as a result of exposure to solvent fumes during his employment. The jury returned a verdict in the employee’s favor. The Court of Appeals mostly affirmed the verdict. The Supreme Court affirmed, the Court of Appeal’s ruling. Holding that the appeal was timely the Court found that CSX’s motion to reconsider the judgment tolled the time for taking the appeal until 30 days after service of the order denying a new trial. The Court also held that CSX could not claim that the trial court erred in allowing the employee’s expert to testify when CSX failed to make an objection at trial. Lastly, the Supreme Court upheld the sufficiency of the jury instructions.

CSX Transportation v. John X. Begley

[2008-SC-000643-DG](#) May 20, 2010

Opinion of the court. All sitting; all concur. A former employee brought a FELA suit against CSX, alleging he developed osteoarthritis as a result of his years of work for the railroad. The jury returned a verdict in the employees’ favor and the Court of Appeals affirmed. On appeal to the Supreme Court, CSX raised a number of claims of error regarding the jury instructions that were refused by the trial court. The Supreme Court affirmed, holding that consistent with Rogers and Hamilton, the trial court was not required to instruct the jury on proximate causation. The Court also held that under the circumstances, the trial court’s refusal to instruct the jury on the non-taxation of any damages awarded was harmless error. Finally, the Court held that the foreseeability instruction used by the trial court was adequate under the United States Supreme Court’s decision in Gallick, since the jury was instructed that CSX’s duty is measured by what a reasonably prudent person would anticipate under the same or similar circumstances.

Sunbeam Corp. v. Hon Ronnie C. Dortch, Judge, Hancock Circuit Court & Sherry J. McGlenon and Terry L. Parker, co-executors of the Estate of Leon J. Fischer

[2009-SC-000501-MR](#) May 20, 2010

Opinion by Justice Abramson. All sitting; all concur. An estate brought suit against Sunbeam alleging it exposed decedent to asbestos fibers during his employment. Sunbeam moved to dismiss on the grounds the claims were discharged in its 2002 bankruptcy. The motion to dismiss was denied and Sunbeam sought a writ from the Court of Appeals, arguing that claims bearing upon its bankruptcy discharge were in the sole jurisdiction of the bankruptcy court. The Court of Appeals denied the writ. The Supreme Court affirmed the Court of Appeals, holding that it is well settled that state courts have concurrent jurisdiction under 28 USC 1334(b) to construe the discharge and determine whether or not a particular debt is within the discharge.

Kentucky Farm Bureau Mutual Insurance Co. v. James O. Young, et al.

[2008-SC-000333-DG](#) May 20, 2010

Opinion by Justice Venters. All sitting; all concur. The trial court granted summary judgment in favor of an underinsured motorist insurance carrier, holding the policyholder failed to satisfy KRS 304.39-320(3) because the Coots notice contained inaccurate settlement information. The Court of Appeals reversed, holding that the insurer had adequate notice of the proposed settlement. The Supreme Court reversed the Court of Appeals, holding that Coots notices must contain accurate information about the amount of the settlement. The Court cautioned that its ruling was not to be used by insurers as a weapon to deny benefits, holding that where an insurer has reason to doubt the accuracy of the settlement information in the Coots notice, it has a duty to take steps to resolve the doubt—as the insurer did in this case.

Note: June case summaries were not posted. Therefore all of the following decisions are taken from SC minutes and are presented without a summary of the Court's opinion.

WORKERS COMPENSATION

Hoyle Styles v. Elkhorn Truck Parts & Service

[2009-SC-000494-WC](#) June 17, 2010

Opinion of the court - affirming. All sitting; all concur.

Questions Presented: Social Security Benefits

Workers' Compensation. KRS 342.730(4). Whether a worker who qualifies for old-age social security benefits when injured may receive two years of permanent income benefits in addition to any temporary total disability benefits.

David Belsito v. U-Haul Company of Kentucky

[2009-SC-000550-WC](#) June 17, 2010

Opinion of the court - affirming. All sitting; all concur.

Questions Presented: Appeals

Workers' Compensation. Appellate Procedure. Whether a failure to serve the Workers' Compensation Board with a copy of the petition for review as required by CR 76.25(8) before filing a timely petition warrants dismissal.

Sarah Fortney, Administrator et al v. Airtran Airways, Inc.

[2009-SC-000429-WC](#) June 17, 2010

Opinion of the court – reversing and remanding. Venters, J., dissents by separate opinion in which Schroder, J., joins.

Questions Presented: Going and coming rule

Workers' Compensation. Work-related. Whether the "going and coming" rule barred compensation for the death of an airline pilot traveling as a passenger under the employer's free or reduced-fare arrangement from the city where he resided to the city from which he worked.