Kentucky Supreme Court
Cases of Note
November-December, 2010

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INSURANCE

State Farm Mutual Automobile Insurance Company v. Carlene Slusher, Administratrix of the Estate of Donald Slusher
2009-SC-000513-DG November 18, 2010
Opinion of the Court by Justice Venters. All sitting; all concur. Held – If, because of the exclusive remedy provisions of Kentucky's Workers' Compensation Act, a worker injured in a work-related motor vehicle accident caused by a co-worker, is not legally entitled to collect any further amounts from either his employer or the co-employee, he may not collect either UM or UIM benefits under an insurance policy which provides that to collect under those provisions the insured must be "legally entitled to collect" from the tortfeaser.

Kentucky Farm Bureau Mutual Insurance Company v. Shelter Mutual Insurance Company
2008-SC-000781-DG November 18, 2010
Opinion of the Court by Justice Scott. All sitting; all concur. This case arose from a two-car accident in which Farm Bureau insured the non-owner, but permissive driver, of the vehicle, while Shelter insured the vehicle through the owner's policy. The Court was confronted with two automobile insurance policies, both claiming to provide only excess coverage. The Court found somewhat unsatisfactory the "two-step" framework wherein the trial court examines each policy, determines that the excess clauses are mutually repugnant, and prorates the damages between the insurance companies. Instead, the Court held that, based on legislative intent underlying the Kentucky Motor Vehicle Reparations Act (MVRA) KRS 304.39-010, et. seq., and the spirit and intent of the MVRA, in instances where both the vehicle owner and non-owner driver are separately insured, the vehicle owner's insurance shall be primary.

WORKERS COMPENSATION

Chester Hogston v. Bell South Telecommunications, et al.
2010-SC-000299-WC November 18, 2010
Opinion of the Court. All sitting; all concur. The claimant injured his right knee while performing work for Bell South. His medical history included a previous non-work-related left knee injury as well as work-related injuries to both knees. An Administrative Law Judge relied on Chrysalis House, Inc. v. Tackett, 283 S.W.3d 671 (Ky. 2009), as authority to deny double benefits under KRS 342.730(1)(c)2. The ALJ noted that the restrictions resulting in his termination concerned his left knee and found there to be no connection between the cessation of employment and the right knee injury for which he sought compensation. Appealing, the claimant asserted that the ALJ misapplied Chrysalis House and that the decision should be limited to its facts because it ignored the plain language of KRS 342.730(1)(c)2, which is more specific than KRS 342.730(1). The Workers' Compensation Board and the Court of Appeals

affirmed. The Supreme Court reversed, convinced that the claimant was entitled to double benefits. The court refused to limit Chrysalis House to instances in which an employee would otherwise profit from the consequences of illegal conduct, noting that the decision was based on statutory interpretation rather than public policy. The court reasoned that the claimant was entitled to double benefits, however, because KRS 342.730(1) permits disability from previous work-related injuries to be considered for certain limited purposes, such as when finding a worker to be totally disabled, and noted that KRS 342.730(1)(e) makes no reference to enhanced benefits.

Blackstone Mining Company v. Travelers Insurance Company
2009-SC-000015-DG December 16, 2010
Opinion of the Court by Justice Venters. All sitting. Based on an audit, Travelers, a workers's compensation insurance company, brought an action against employer (Blackstone) for unpaid premiums on certain employees. Employer then produced evidence of rejection notices signed by the employees rejecting workers' compensation coverage. The Supreme Court held that the signed rejection notices were presumptively valid and, under the Steelvest summary judgment standard, sufficiently established the employees's rejection of workers's compensation so as to shift the burden to Travelers to present affirmative evidence establishing a genuine issue of fact regarding the validity of the rejection notices. In light of Travelers failure to present such evidence, employer was entitled to summary judgment. Justice Scott dissented, stating his view that Travelers Insurance presented sufficient evidence to challenge the validity of the rejection notices.

Kentucky Associated General Contractors Self-Insurance Fund v. Sheila Lowther, Administrative Law Judge, Et al.
2010-SC-000114-DG December 16, 2010
Opinion of the Court. All sitting; all concur. The injured worker and his employer settled his claim, agreeing among other things to continued medical benefits. Kentucky Associated General Contractors Self-Insurance Fund (KACG) refused to pre-authorize certain treatment but failed to file a medical dispute or motion to reopen. The worker complained to the Office of Workers' Claims and the Office's Executive Director determined that KAGC and its third-party administrator committed unfair claims settlement practices, imposing fines for their failure "to meet the time constraints . . . established in KRS 342" and subsequent failure to "attempt in good faith to promptly pay a claim in which liability is clear." The Executive Director based the decision on the Workers' Compensation Board's longstanding interpretation of the applicable regulations as equating a final utilization review decision with a "statement for services" that an employer must contest within 30 days or pay. The Franklin Circuit Court and the Court of Appeals affirmed. The Supreme Court also affirmed, finding no error in the Board's interpretation of the regulations and noting that employer, KAGC, and the third-party had ample notice of the interpretation since it was adopted in 2001.

Susan Garno v. Solectron USA, Et al.
2010-SC-000154-WC December 16, 2010
Opinion of the Court. All sitting; all concur. Garno sought benefits for workrelated injuries that occurred in 2002, when Royal & Sun Alliance provided coverage, and in 2004, when St. Paul Travelers provided coverage. The claim was later bifurcated and questions related to the extent and duration of disability held in abeyance until the claimant reached maximum medical improvement. In March 2006 the ALJ found the injuries to be work-related; ordered Royal to pay all TTD and medical benefits due between the dates of the injuries and assigned equal liability to the carriers for benefits due after the 2004 injury. In January 2007 Garno filed the first several requests for reimbursement of out-of-pocket medical expenses, some of which dated to 2002 and 2003. The carriers filed medical disputes, asserting that the reimbursement

requests were untimely under 803 KAR 25:096, § 11 and not supported by documentation adequate to determine if the expenses were compensable. Finding no reasonable excuse for Garno's failure to submit reimbursement requests until January 2007, the ALJ found all expenses incurred more than 60 days before submission to be noncompensable. The Workers' Compensation Board and Court of Appeals affirmed. The Supreme Court also affirmed, rejecting Garno's argument that the interlocutory order of March 2006 was not enforceable and that her obligation to present the requests did not arise until a final award was entered. The court determined that KRS 342.305 permitted the terms of the interlocutory order to be enforced until superseded by a subsequent order or award.

Shane Granger v. Louis Trauth Dairy, Et al.
2010-SC-000253-WC December 16, 2010
Opinion of the Court. All sitting. Minton, C.J.; Abramson and Schroder, JJ., concur. Venters, J., concurs in result only by separate opinion. Scott, J., dissents by separate opinion in which Cunningham and Noble, JJ., join. Granger testified that he injured his leg on August 15, 2007, when a case filled with nine halfgallons of milk came down a chute, striking his leg and causing him to fall. He failed to notify his employer of the accident until sometime after he obtained medical treatment, explaining that the accident left only a welt or red mark on his leg initially. He sought treatment on November 7, 2007 although his shin remained bruised through October 2007; became red and discolored; and developed an open, draining sore despite self-treatment. The ALJ agreed that an employee is not required to report every minor bump or bruise but found that he could not have reasonably considered the injury to be insignificant when it began to worsen and develop an open sore and concluded that a further delay in giving notice was inexcusable. The Workers' Compensation Board and the Court of Appeals affirmed. The Supreme Court also affirmed.

Stephanie Lawson v. Toyota Motor Manufacturing
2009-SC-000767-WC December 16, 2010
Opinion of the Court. All sitting; all concur. Lawson requested post-award temporary total disability (TTD) benefits prospectively, for the recovery period following a pre-authorized surgery. The ALJ denied the motion, finding that the surgery was non-compensable because it was unnecessary. The Workers' Compensation Board reversed and remanded with respect to the TTD request, reasoning that the employer failed to file a medical dispute within 30 days after the surgery was pre-authorized in order to contest its reasonableness and necessity. The Court of Appeals reversed, however, and remanded to the Board to determine whether substantial evidence supported the finding that the surgery was non-compensable. The Supreme Court reversed, noting that the Benefit Review Conference Memorandum encompassed the claimant's argument, raised in her brief and preserved on appeal, that the employer's failure to file a timely medical dispute and motion to reopen contesting the utilization review decision rendered the proposed surgery compensable without regard to reasonableness and necessity. Moreover, having failed to invoke the ALJ's jurisdiction by filing a timely medical dispute and motion to reopen, the employer could not engraft such a dispute onto the claimant's pending motion requesting TTD.