

Kentucky Supreme Court
Cases of Note
January-February, 2011

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 Court in February.

INSURANCE

Progressive Max Insurance Company v. National Car Rental Systems, Inc. **2009-SC-000577 - DG January 20, 2011**

Opinion of the Court by Justice Scott. All sitting; all concur. This case involved a subrogation dispute between the insurer of a rental vehicle (National) and the insurer of a rental car driver (Progressive). At issue was: (1) whether National was the primary Basic Reparations Obligor to an injured third party; (2) whether National, having paid basic reparations benefits (BRB) to an injured third party, could employ KRS 304.39-050 or KRS 304.39-070 to recover the paid BRB from Progressive; and (3) whether, and to what extent, National was required to comply with KRS 304.39-070.

In reversing the Court of Appeals, the Kentucky Supreme Court, applying KRS 304.39-050, held National as the primary obligor for BRB because National was the insurer of “the vehicle occupied by the injured person at the time of the accident.” The Court further ruled that National could not employ KRS 304.39-050 as a vehicle for recovery, but rather held that KRS 304.39-070 as National’s proper avenue of recover. However, the Court concluded that because National did not comply with KRS 304.39-070, its case should be dismissed.

WORKERS COMPENSATION

Matthew Hudson v. Cave Hill Cemetery **2010-SC-000223-WC January 20, 2011**

Opinion of the Court. All sitting; all concur. After the ALJ rendered an opinion and order in this medical reopening relieving the employer of liability for some of the disputed expenses, Hudson asserted that the parties settled their dispute before the submission date listed on the hearing order. The employer argued, however, that the parties failed to come to terms concerning a particular bill and a Medicare Set-Aside Account and also because they failed reduce the agreement to the memorandum required by KRS 342.265(1). Hudson submitted his handwritten notes indicating that the carrier agreed to settle for a lump sum of \$50,000.00 “to include set aside” as well as his attorney’s note to the carrier indicating that he agreed to accept the offer. He also submitted a letter from the carrier, which indicated that the lump sum represented a “full and final resolution” of his workers’ compensation claim and that the carrier was seeking information about how to proceed with the Medicare Set-Aside. Although the ALJ found there to be a valid agreement, the Workers’ Compensation Board reversed and the Court of Appeals affirmed. The Supreme Court also affirmed, holding that the agreement was incomplete because the lump sum included income as well as medical benefits but the parties clearly had not come to terms concerning the amount of lump sum proceeds to be allocated to the Medicare Set-Aside Account. The court reasoned that the allocation may have legal consequences and is an essential element of a settlement that includes such an account.