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

PRODUCT'S LIABILITY

Giddings & Lewis, Inc. et al. v. Industrial Risk Insurers et al.
2009-SC-000485-DG June 16, 2011
2009-SC-000825-DG June 16, 2011
Opinion by Justice Abramson, affirming in part, reversing in part. All sitting; all concur.
The Court affirms in part and reverses in part the opinion of the Court of Appeals, rendering final the trial court's grant of summary judgment to Giddings & Lewis, the manufacturer.
Appellee Ingersoll Rand purchased from Appellant Giddings & Lewis, Inc. a Diffuser Cell System (System), which consisted of several components designed to perform separate functions. After seven years of operation, the System malfunctioned, damaging the entire System. Giddings & Lewis rebuilt the System and Ingersoll Rand's insurer, Industrial Risk Insurers, paid $2,798,742.00 for repairs, overtime pay and related expenses.
Industrial Risk Insurers sued Giddings & Lewis to recover the amount paid, claiming breach of implied warranty, breach of contract, negligence, strict liability, negligent misrepresentation and fraud by omission. The trial court granted summary judgment to Giddings & Lewis, holding the insurers' implied warranty claim was barred by the statute of limitations and, further, the economic loss rule barred the tort claims, including those for fraud and negligent misrepresentation. The trial court also declined to adopt the "calamitous event" exception to the economic loss rule and held the components of the System constituted one product. The Court of Appeals affirmed the adoption of the economic loss rule and agreed the calamitous event exception should be rejected, but held the economic loss rule did not bar the negligent misrepresentation and fraud claims. The Court of Appeals also found the question of whether the components of the System constituted one product was a question of fact for the jury.
The "economic loss rule" prevents the commercial purchaser of a product from suing in tort to recover for economic losses arising from the malfunction of the product itself, recognizing that such damages must be recovered, if at all, pursuant to contract law. Faced squarely with a classic case for application of the economic loss rule, the Court held for the first time that, in Kentucky, the economic loss rule applies to negligence, strict liability and negligent misrepresentation claims arising from a defective product sold in a commercial transaction, and that the relevant product is the entire item bargained for by the parties and placed in the stream of commerce by the manufacturer. Further, the economic loss rule applies regardless of whether the product fails over a period of time or destroys itself in a calamitous event, and the rule's application is not limited to negligence and strict liability claims but also encompasses negligent misrepresentation claims. The Court did not decide the impact of the economic loss rule on fraud claims because the plaintiffs' fraud by omission claim was unsustainable on the record, irrespective of the economic loss rule.

WORKERS COMPENSATION

Ron Burroughs v. Martco
2010-SC-000431-WC May 19, 2011
Opinion of the Court. All sitting; all concur. The ALJ found Burroughs to be totally disabled at the reopening of his claim but, having noted that the weekly benefit for total or partial disability would be the same, awarded benefits only for "the remaining period of his earlier award." Burroughs failed to petition for reconsideration or appeal. Martco ceased paying benefits when the 425-week period of the initial award ended, which occurred before Burroughs became eligible for old-age social security retirement benefits but more than four years after the latest order granting or denying benefits. Burroughs sought to have the duration of the award corrected by filing a motion to reopen under KRS 342.125, in which he alleged a mistake of law, as well as by filing a motion to reopen under CR 60.01 and CR 60.02. The ALJ denied both motions reasoning that KRS 342.125(3) barred reopening at that time and that an ALJ lacks the authority to rule on a motion filed under CR 60.01 or CR 60.02. The Board and the Court of Appeals affirmed. Also affirming, the Supreme Court noted that the award clearly contained a patent error but that KRS 342.125(3) requires a motion to reopen to correct such a mistake to be filed within four years after the original award or four years after the latest order granting or denying benefits. The court noted also that the Kentucky Rules of Civil Procedure apply to proceedings before an administrative agency only to the extent provided by statute or regulation and that the workers' compensation regulations have not adopted CR 60.01 or CR 60.02.

Kroger v. Japheth Ligon
2010-SC-000385-WC May 19, 2011
Opinion of the Court. All sitting. All concur. Ligon underwent arthroscopic shoulder surgery involving the surgical implantation of two metallic anchors in order to repair a work-related SLAP tear (superior labrum tear from anterior to posterior). The ALJ awarded temporary total disability benefits but dismissed the claims for permanent income and medical benefits based on the 0% impairment rating assigned by Kroger's medical expert as well as other physicians' statements that Ligon required no further medical treatment and had received "all the treatment he needs at this point." The Board held that the ALJ erred by denying future medical benefits but that the evidence did not compel an award of permanent income benefits. The Court of Appeals affirmed. Also affirming, the Supreme Court noted that Ligon did not sustain a temporary exacerbation of a pre-existing condition but an injury that required surgery and the permanent implantation of hardware in his shoulder. Thus, evidence that he required no treatment as of MMI or the date his claim was heard did not show that he would not require treatment "during disability" regardless of the finding that the injury warranted no permanent impairment rating. The court noted also that a different ALJ might have relied on a different physician with respect to the permanent impairment rating the injury caused but was not convinced that the evidence compelled the ALJ to do so.

NESCO v. Jacklyn Haddix
2010-SC-000216-WC May 19, 2011
Opinion of the Court. All sitting. All concur. An ALJ found that Haddix's work for NESCO's temporary employment agency was sporadic but failed to specify whether KRS 342.140(1)(d) or (1)(e) was used to calculate her average weekly wage. Stating that the parties were uncertain which subsection to apply, the Board reversed and remanded for the taking of further proof followed by an analysis of the evidence under subsection (1)(e). The Court of Appeals affirmed. The Supreme Court affirmed to the extent that the ALJ must make a realistic estimate of Haddix's probable earnings in a normal 13-week period of employment under subsection (1)(e), taking into account the parties' sporadic employment relationship of nearly two years' duration as well as the fact that she sometimes declined offered work. The court reversed with respect to

reopening the proof, noting that Haddix had argued from the outset that KRS 342.140(1)(e) governed the calculation and had the burden to submit the necessary evidence within the time for taking proof.

Anthony Traugott v. Virginia Transportation
2010-SC-000696-WC June 16, 2011
Opinion of the Court. All sitting; all concur. Traugott was a Kentucky resident whose work required him to travel throughout the lower 48 states, spending a majority of his time in no one state. His employer was headquartered in Rhode Island and had no Kentucky office. He sought workers' compensation benefits in Kentucky for an injury that occurred while he was working in Missouri. The ALJ dismissed the claim, having found that Kentucky lacked extraterritorial jurisdiction under KRS 342.670(1) and (5) because Traugott's employment was not principally localized in Kentucky and his contract for hire was not made in Kentucky. The ALJ reasoned with respect to the latter finding that Traugott offered his services to the defendant by telephone from his home in Kentucky; received and returned an employment application by fax; and was advised by telephone from Rhode Island that he was accepted if he completed certain requirements. Final acceptance occurred in Rhode Island where he did so. The Workers' Compensation Board and Court of Appeals affirmed, with the court noting that no evidence showed the defendant's acceptance to be contingent upon Traugott's completing certain tasks in Rhode Island. Also affirming, the Supreme Court determined that substantial evidence supported the legal conclusion that the contract for hire was made in Rhode Island. The contract was formed when the defendant accepted Traugott's offer of his services for hire by telephone in Rhode Island. No evidence compelled the parties' roles to be viewed differently.

WRITS

State Farm Insurance Company v. Brian C. Edwards, Judge of the Jefferson Circuit Court, and Mark Roden
2010-SC-000521-MR May 19, 2011
State Farm sought an order prohibiting the Jefferson Circuit Court from referring its default judgment motion to a court commissioner for preliminary factual findings. State Farm maintained that referrals of default judgment motions are a routine practice in the Jefferson Circuit Court, that they are unnecessary, and that they violate the civil rules providing for commissioner referrals. The Court of Appeals denied the motion for extraordinary relief, and the Supreme Court upheld that denial. The Court noted that there was no evidence of record regarding this alleged routine practice, simply representations of counsel. While a practice of automatically referring all default judgment matters to the commissioner would likely violate the civil rules, the Court held that State Farm could raise its concerns regarding this particular referral by way of appeal and that extraordinary relief was therefore inappropriate.