

Kentucky Court Of Appeals
Cases of Note
[March-April, 2013](#)

Note: Case summaries on the Court of Appeals website for these months are contained in a report of published opinions from June 1, 2012 through May 31, 2013. This report has been prepared from that document and by reviewing the COA [Minutes](#) for published opinions in each of the relevant areas.

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”.

INSURANCE

Medlin v. Progressive Direct Insurance **[2011-CA-002258-MR](#) 04/05/2013**

Opinion by Judge Stumbo; Judges Keller and Thompson concurred. The Court of Appeals affirmed an order denying appellant’s motion for declaratory relief. The Court held that the circuit court correctly concluded that the Motor Vehicle Reparations Act (MVRA) only requires insurance obligors to either pay medical expenses directly to medical providers or to reimburse the insured for actual accrued economic losses. Because appellant had not personally paid any medical bills, he had not incurred any economic losses and was not entitled to be directly reimbursed. The Court further noted that appellant had been offered three options for collecting his PIP benefits: payment to appellant’s chiropractor directly; reimbursement for out-of-pocket expenses; and payment by check in an amount equal to his medical bills and with the check including his name and the name of his medical provider. The first two options are included in the Motor Vehicle Reparations Act, and the third option was pursuant to an agreement between the parties. Having declined all three options, appellant was not entitled to the declaratory relief he sought in circuit court.

Cole v. Fagin **[2012-CA-000797-MR](#) 04/19/2013**

Opinion by Judge Moore; Judges Nickell and Taylor concurred. The Court of Appeals reversed the circuit court’s entry of summary judgment on statute of limitations grounds in an automobile negligence action. The Court held that an automobile insurer was required under the Motor Vehicle Reparations Act (MVRA) to utilize the insured’s basic reparations benefits (BRB) coverage prior to medical payments (MedPay) coverage to pay the insured’s accrued medical expenses. Because of this, the MVRA’s two-year limitations period started to run only when the last BRB disbursement was made to the insured, even though the insurer had characterized its reimbursements to the insured as MedPay and the insured did not object to its characterization. Thus, how the reimbursements were “labeled” by the parties was ultimately irrelevant. In reaching its decision, the Court noted that there was no dispute that all accrued medical expenses could have been paid via BRB coverage. The Court further noted that allowing an insurer to apply medical expenses toward MedPay coverage, when those expenses could also have been applied toward BRB coverage, would be fundamentally at odds with the concept of “no-fault” in Kentucky.

TORTS

Crutcher v. Harrod Concrete and Stone Co.

[2010-CA-001750-MR](#) 03/22/2013

Opinion by Judge Nickell; Judges Combs and Moore concurred. A landowner filed suit for damages against a neighboring quarry owner and operator, alleging that the operator had encroached in its land and removed subsurface limestone. The circuit court entered judgment on a jury verdict for the landowner, but reduced the jury's award of punitive damages. On appeal, the Court of Appeals affirmed in part, reversed and vacated in part, and remanded. The Court first held that the evidence supported the jury's finding that the operator committed willful trespass, but it concluded that the measure of compensatory damages applied by the jury was improper. The Court held that the proper measure of compensatory damages for an intentional trespass from the removal of limestone as result of subsurface mining activity is the value of the limestone material at the time and place of its removal, without deducting the expense of severing it, rather than the difference in the fair market value of the land immediately before and after the encroachment. The Court next held that while an award of punitive damages was appropriate, the measure of punitive damages applied by the jury was improper. It was erroneous to award appellants the market value of the limestone as punitive damages because there was no direct correlation between punitive damages and appellants' loss, and because punitive damages cannot be transformed into compensatory damages without negating the specific purpose of the award. The Court then noted that an award of punitive damages at a rate of 25 times the award of compensatory damages could easily cross the line into the area of constitutional impropriety when it has been recognized that a ratio of just 4:1 might be close to the line.

Carroll v. Wright

[2012-CA-000787-MR](#) 04/05/2013

Opinion by Judge Stumbo; Chief Judge Acree and Judge Combs concurred. The Court of Appeals reversed a trial verdict and judgment and remanded for retrial on the issue of damages in this negligence action after holding that appellant was entitled to a directed verdict as to liability. Although the Court had held in a previous appeal in this action that appellant was not entitled to a directed verdict as to liability, the Court was not constrained by the "law of the case" doctrine to make the same holding in a subsequent appeal due to new evidence produced at the second trial that was directly relevant to causation and liability. Uncontroverted testimony indicated that appellee lost control of his tractor trailer, that it slid into oncoming traffic causing the accident and appellant's resulting injuries, and that in so doing appellee had violated statutory and common-law duties to stay in his lane and to safely operate his vehicle. This new evidence required a directed verdict as to liability in favor of appellant.

WORKERS COMP

Watkins (Kevin A.) v. Kobe Aluminum, et al

[2012-CA-001482-WC](#)

LAMBERT, JUDGE: Kevin A. Watkins has petitioned this Court for review of the July 30, 2012, opinion of the Workers' Compensation Board (the Board) vacating in part the opinion, award, and order of the Administrative Law Judge (the ALJ) and remanding the case to the ALJ for further findings related to the 20% impairment rating assigned by Dr. Colin Looney. Watkins contends that the Board exceeded its authority in making inferences from the evidence and erroneously directed the ALJ to perform an analysis of the American Medical Association (AMA) Guides. We disagree with Watkins that the Board acted erroneously or exceeded its authority; hence, we affirm the Board's decision.