

**Kentucky Court Of Appeals**  
**Cases of Note**  
**July-August, 2013**

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1. Hold down the control (“Ctrl”) key and click on the link.
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**INSURANCE**

**Progressive Max Ins. Co. v. Jamison**

**[2011-CA-001127](#) 07/19/2013 2013 WL 3778135**

Opinion by Chief Judge Acree; Judges Moore and Thompson concurred.

In an appeal and cross-appeal following a trial to resolve a defendant’s claim for underinsured motorist benefits, the Court of Appeals held that the trial court committed reversible error by failing to apply two statutory setoffs to the jury’s damages award: (1) a reduction for basic reparations benefits paid pursuant to KRS 304.39-060(2)(a), and (2) a reduction representing the tortfeasor’s liability insurance policy limits pursuant to KRS 304.39-320. The Court further held that once fault was established against the tortfeasor and the underinsured-motorist claim was resolved, the defendant insurance company was entitled to collect on its properly-preserved subrogation cross-claim. As to the cross-appeal, the Court held that the trial court’s ruling preventing the plaintiff from specifically identifying the defendant insurance company as his underinsured-motorist carrier did not offend the mandates set forth in *Earle v. Cobb*, 156 S.W.3d 257 (Ky. 2005) since the insurer was identified as a real party in interest. Likewise, there was no error in the trial court’s decision to restrict the parties from discussing insurance or underinsured motorist benefits during trial.

**Riggs v. State Farm Mut. Auto. Ins. Co.**

**[2012-CA-000354](#) 07/19/2013 2013 WL 3778143**

Opinion by Chief Judge Acree; Judge Taylor concurred; Judge VanMeter dissented and filed a separate opinion.

The Court of Appeals reversed and remanded the circuit court’s entry of summary judgment against appellant as to appellant’s underinsured-motorist claim. The circuit court had found the claim to be contractually time-barred. In reversing, the Court declared unreasonable, and therefore invalid, a two-year contractual limitation provision requiring any action for underinsured motorist benefits to be brought within two years from the date of injury or the last basic reparations benefit paid, whichever is later. While the contractual limitation did not require the injured party to sue his or her UIM carrier prior to suing the tortfeasor, the limitation had the possibility of compelling an insured to file a protective suit against his or her carrier before the two years elapsed, even though a prior suit against the tortfeasor might not yet have yielded discovery that would disclose any need to pursue UIM coverage. Absent a reasonable contractual provision providing otherwise, the fifteen-year limitations period set forth in KRS 413.090(2) controlled.

**NEGLIGENCE**

**Patton v. Bickford**

**[2012-CA-000598](#) 07/19/2013 2013 WL 3778148**

Opinion by Judge VanMeter; Judges Clayton and Lambert concurred.

In a wrongful death action against middle school teachers, a principal, and superintendents, in their individual capacities, alleging negligence in failing to supervise students at school and to comply

with anti-bullying policies and procedures (which resulted in a student being subjected to bullying and eventually taking his own life), the Court of Appeals held that the circuit court properly granted summary judgment in favor of the defendants. The Court first held that the defendants were not entitled to summary judgment on the grounds of qualified official immunity since their duty of care with respect to bullying incidents was set forth in the school's student handbook and their duties were partly ministerial in nature. However, the Court held that summary judgment was nonetheless appropriate because the student's act of suicide in his home was an intervening and superceding act that cut off any potential liability. The record did not reflect that anyone was aware that the student was suicidal, especially considering that his friends and parents were shocked by the incident. Additionally, when the student committed suicide in his home he was not in the direct care of the defendants.

**Nissan Motor Co., Ltd. v. Maddox**

**[2012-CA-000952](#) 08/30/2013 2013 WL 4620488 DR Pending**

Opinion by Judge Combs; Judge Nickell concurred; Judge Maze concurred in part, dissented in part, and filed a separate opinion. The Court of Appeals held that the circuit court properly denied appellant's motion for a directed verdict in a negligence action stemming from an automobile accident. Appellee alleged that appellant's negligent design of appellant's vehicle's restraint system caused the severity of her injuries resulting from a head-on collision with another vehicle. In affirming, the Court held that evidence supported the jury's finding of negligent design and that the circuit court did not err when it allowed a jury instruction regarding failure to warn. Additionally, the Court held that - based on the facts - appellee met the requirements for a *prima facie* claim of crashworthiness. Thus, the circuit court did not err in allowing the jury to be instructed on crashworthiness or in denying a directed verdict based on the elements of crashworthiness. The Court further held that the circuit court did not abuse its discretion by admitting evidence of a recall of a vehicle produced by a different automobile manufacturer for the limited purpose of proving that the amount of excess webbing spooling from appellee's seatbelt was dangerous. The Court finally held that the issue of punitive damages was properly presented to the jury because appellee's claims were related to a flawed vehicle design and lack of warning. Judge Maze dissented solely on the issue of punitive damages, disagreeing that appellant's actions surmounted the threshold of gross negligence.

**WORKERS COMP**

**Falk v. Alliance Coal, LLC**

**[2012-CA-000624](#) 08/16/2013 2013 WL 4246048 DR Pending**

Opinion by Judge Stumbo; Chief Judge Acree and Judge Maze concurred. The Court of Appeals held that appellee was immune from tort actions pursuant to KRS 342.690(1) as a self-insurance carrier. Three miners were killed while working for two of appellee's subsidiary companies, and the estates of the miners were awarded workers' compensation benefits. The Court held that because appellee had self-insured itself and its subsidiaries under one self-insurance scheme, it was a "carrier" for immunity purposes pursuant to KRS 342.690(1). The Court further held that even assuming that appellee did not strictly meet the definition of a carrier or self-insurer, as a matter of public policy it still merited immunity from tort liability as a guarantor of the workers' compensation obligations of its self-insured subsidiaries.