

**Kentucky Court Of Appeals**  
**Cases of Note**  
**[November-December, 2013](#)**

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**CIVIL PROCEDURE**

**Hughes v. Lawrence-Hightchew**

**[2012-CA-002140](#) 12/20/2013 2013 WL 6710196 DR Pending**

Opinion by Judge Combs; Judges Lambert and Thompson concurred. On appeal from an order dismissing a personal injury complaint on grounds of misjoinder, the Court of Appeals vacated and remanded. The Court relied upon CR 21, which expressly provides that misjoinder is not a basis for dismissal of any action. The Court noted that the provisions of CR 21 instead permit the trial court, in its discretion, to sever a claim if it finds that there has been a misjoinder. The Court further noted, however, that in cases involving separate motor vehicle collisions linked closely in time, courts in other states often favor a joinder of claims - particularly where there are common factual questions as to the nature, cause, and extent of a party’s injuries.

**DAMAGES**

**Saint Joseph Healthcare, Inc. v. Thomas**

**[2012-CA-000941](#) 12/06/2013 2013 WL 6385845 DR Pending**

Opinion by Judge Maze; Judge Combs concurred; Judge Nickell concurred in part and dissented in part by separate opinion. The Court of Appeals affirmed the circuit court’s denial of appellant’s motions for a directed verdict or a new trial as to a punitive damages award. The award resulted from a medical negligence claim and a claim brought under the Emergency Medical Treatment and Active Labor Act (EMTALA) by the estate of an emergency room patient. In finding for the estate, the jury awarded compensatory damages of \$25,000, with 15% of the fault apportioned to appellant. However, the jury also ultimately assessed punitive damages against appellant in the amount of \$1.45 million. On appeal, the Court held that appellant was not entitled to a directed verdict re punitive damages because the estate had submitted sufficient evidence of ratification, as required by KRS 411.184(3), and that appellant had acted with gross negligence. On the ratification issue, the Court held that the concerted actions of the emergency room staff and appellant’s subsequent statements of approval of those actions were sufficient to show ratification. The Court also held that appellant’s actions were sufficient to show gross negligence in relation to EMTALA’s stabilization requirement even though appellant provided some medical care to the decedent. The Court also rejected appellant’s claim that the punitive damages award of \$1.45 million was excessive under the standards set out in *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003), and *BMW of North America v. Gore*, 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996). While the Court agreed that the punitive damages award was disproportionate to the underlying compensatory damages award, the majority concluded that the ratio of punitive to compensatory damages was not controlling in light of more significant factors: the reprehensibility of appellant’s actions; the decedent’s position of vulnerability; the disparity between the relatively low award of compensatory damages and the harm caused; the statutory purposes of appellant’s duties under EMTALA; and the amount of civil and criminal penalties imposed by EMTALA for violation of those duties. Based upon these factors, the majority concluded that the jury’s award of punitive

damages was not excessive. In dissent, Judge Nickell argued that the vastly disproportionate ratio of punitive to compensatory damages could not be upheld even in light of appellant's egregious conduct.

## **WORKERS' COMP**

### **Kentucky State Police v. McCray**

**[2013-CA-000857](#) 11/01/2013 2013 WL 5864401 Released for Publication**

Opinion by Judge Stumbo; Judge Nickell concurred; Judge Combs concurred via separate opinion. The Court of Appeals reversed a decision of the Workers' Compensation Board that directed an ALJ to reexamine a police officer's claim for benefits upon holding that the officer's post-traumatic stress disorder (PTSD) was not compensable. The officer suffered PTSD after killing a man while on duty. The Court held that KRS 342.0011(1), *Lexington-Fayette Urban County Government v. West*, 52 S.W.3d 564 (Ky. 2001), and *Kubajak v. Lexington-Fayette Urban County Government*, 180 S.W.3d 454 (Ky. 2005), require the presence of a "physically traumatic event" in order for a claimant to be entitled to workers' compensation benefits arising from PTSD. In this case, the officer was not physically injured during the shooting, so his PTSD was not compensable.