

**Kentucky Supreme Court**  
**Cases of Note**  
**January-[February](#), 2014**

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 January**

## **INSURANCE**

### **James D. Nichols v. Zurich American Insurance Company**

**[2012-SC-000317-DG](#) February 20, 2014**

Opinion of the Court by Justice Venters. All sitting. All concur. Insurance; Contract reformation; Mutual mistake. Questions presented: 1) Was the insurance company, Zurich, entitled to reformation of insurance policy based upon the doctrine of mutual mistake when it issued a policy that provided uninsured and underinsured motorist coverages (UIM) that its policy-holder intended to reject; 2) Whether a mutual mistake in the formation of an insurance contract authorized the equitable reformation of the policy to eliminate the unwanted coverage after a covered individual, Nichols, incurred loss and detrimentally relied upon the existence of unintended coverage; 3) whether the trial court abused its discretion in failing to grant Nichols leave to file an amended complaint asserting a claim against Zurich for bad faith. Reformation of a contract under the equitable doctrine of mutual mistake requires that both parties share the same misunderstanding and both execute a contract that, in fact, reflects what neither party intended. Here, the insured party, Miller Pipeline Corporation, intended to procure policy of fleet automobile liability insurance that rejected Kentucky UIM coverage. Zurich, however, was not informed of Miller’s intent, and therefore issued a policy that included such coverage. Before the error was discovered and corrected, Nichols was injured by an underinsured motorist. Nichols followed the procedure required by *Coots v. Allstate Insurance Co.* and, after he accepted a settlement that released the tortfeasor, he asserted a claim for UIM coverage which Zurich denied upon grounds of mutual mistake. Held: 1) the facts before the court establish a unilateral mistake, not a mutual mistake, because Zurich intended to issue the policy that it issued. It was simply unaware that Miller did not want that policy. Therefore, the doctrine of mutual mistake is not available; 2) Nichols’s detrimental reliance upon the availability of UIM coverage precluded reformation of the policy; 3) upon remand, the trial court shall reevaluate Nichols’s motion to amend his complaint, and determine upon current circumstances whether, pursuant to CR 15.02, justice requires the amendment.

## **TORTS**

### **C. Lance Love, M.D. and C. Lance Love, M.D., PLLC v. Lisa Walker and Larry Walker**

**[2012-SC-000602-DG](#) February 20, 2014**

Opinion of the Court by Justice Keller. All sitting. All concur. Dr. Love performed a thyroidectomy on Ms. Walker, following which she developed vocal cord paralysis and breathing difficulties. She and her husband filed a medical malpractice suit against Dr. Love. More than three years after filing suit, the Walkers had not produced an expert who could testify that Dr. Love’s surgery and post-surgery care violated the standard of care. Therefore, Dr. Love moved for summary judgment. The trial court granted the motion and dismissed the Walkers’ claims.

Before the Court of Appeals, the Walkers argued, among other things, that there were two issues - whether Dr. Love's surgery and post-surgery care violated the standard of care and whether Dr. Love violated the standard of care by performing the surgery. The Walkers pointed out that they did have testimony from Ms. Walker's other treating physicians that surgery was not indicated for her condition. The Court of Appeals reversed the trial court's summary judgment finding that there was a legitimate dispute regarding the necessity for an expert as to all issues.

The Supreme Court, affirming in part and reversing in part, held that the Walkers were required to produce an expert as to the standard of care regarding Dr. Love's surgery and post-surgery care. Because the Walkers had more than three years to produce such an expert and failed to do so, the trial court did not prematurely grant summary judgment. However, the Walkers had produced sufficient expert evidence to support their claim that Dr. Love should not have performed the surgery. Therefore, the Supreme Court reversed the trial court's summary judgment on that issue.

**Dr. Philip C. Trover v. Estate of Judith Burton and Trover Clinic Foundation, Inc.**

**And**

**The Trover Clinic Foundation, Inc., d/b/a Regional Medical Center of Hopkins County v.**

**Estate of Judith Burton and Philip C. Trover, M.D.**

**[2011-SC-000580-DG](#) February 20, 2014**

Opinion of the Court by Justice Abramson. All sitting. All concur. The estate of a deceased cancer patient brought a medical negligence action against a radiologist, claiming that he had misread CT scans and delayed diagnosis, and also brought a negligent credentialing claim against the hospital which employed him. The defendant radiologist testified as both a fact witness and as an expert. The trial court excluded proffered impeachment evidence that the radiologist's medical license had been temporarily suspended and, after a full investigation, reinstated with some restrictions under an agreed order of informal resolution. Exclusion of this license evidence was based on the collateral nature of the evidence and the prejudice outweighing probative value. The Court of Appeals, reversing the judgment, held that the license restriction evidence was admissible to impeach the radiologist, an expert witness, and outlined what was necessary for a negligent credentialing claim. Reversing and reinstating the trial court judgment, the Supreme Court held that in light of the fact that the expert was also the defendant and the license restriction evidence was collateral and of limited probative value, the trial court had appropriately applied KRE 404 and 403's probative worth/prejudicial effect balancing test.