

Kentucky Legal Cases of Note

December 22, 2006

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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”.

Here is a summary of some recent legal cases that you may find of interest:

KY COURT OF APPEALS:

CASE NO. 2006-CA-001224-WC, rendered 11/17/06 To be published.

BASHAM V. RUSSELLVILLE WAREHOUSING

The issue presented in this appeal is whether a post-award change of opinion by a medical expert constitutes a “mistake” sufficient to warrant re-opening of a claim under KRS 342.125(1)(c). The COA reversed the Workers’ Compensation Board’s (WCB) decision that the employer had set out a prima facie case for reopening.

Link: http://www.kycases.com/2006/12/workers_comp_ba.html (KY Cases)

CASE NO. 2006-CA-000140-WC, rendered 11/17/06 To be published.

FARRIS V. CITY OF LOUISVILLE

The COA ruled that the WCB erred as a matter of law when it concluded that the claimant was required to support her motion to reopen with evidence of an increased impairment rating. The Board erroneously found that “impairment” as used in KRS 342.125(1)(d) is synonymous with “permanent impairment rating” as defined in KRS 342.0011(35). An increase in disability, such as an increase from permanent partial disability to permanent total disability, is sufficient for additional benefits even though the claimant’s impairment rating did not change from the original award.

Link: http://www.kycases.com/2006/12/workers_comp_fa.html (KY Cases)

CASE NO. 2006-CA-000883-WC, rendered 12/1/06 To be published.

SALYERSVILLE V. SMITH

The COA reversed the decision of the WCB regarding “up the ladder” liability of the City of Salyersville.

Link: <http://opinions.kycourts.net/coa/2006-ca-000883.pdf> (COA)

CASE NO. 2005-CA-00304-WC, rendered 12/8/06 To be published.

FERRY V. CUNDIFF STEEL ERECTORS

THE COA reversed the decision of the WCB regarding “actual damages” and future wages in discrimination claim for filing workers compensation claim.

Link: <http://opinions.kycourts.net/coa/2005-ca-002304.pdf> (COA)

CASE NO. 2006-CA-000351-MR, rendered 12/15/06 To be published.

BISHOP V. MANPOWER INC. of CENTRAL KENTUCKY The COA affirmed in part and reversed in part in a case relating to alleged retaliatory discharge for filing a WC claim.

Link: <http://opinions.kycourts.net/coa/2006-ca-000351.pdf> (COA)

CASE NO. 2006-CA-001072-WC, rendered 12/15/06 To be published.

GENERAL ELECTRIC CO. V. TURPEN

Two issues are raised in this workers’ compensation claim: (1) whether a factual statement in a brief submitted to the ALJ can be deemed an admission; and (2) whether prior to filing a motion to reopen, the claimant is required to give notice of a worsening of a condition. The COA affirmed a WCB ruling that admissions are not a part of a workers’ compensation proceeding and that notice is not required.

Link: <http://opinions.kycourts.net/coa/2006-ca-001072.pdf> (COA)

KY SUPREME COURT:

CASE NO. 006-SC-000048-WC, rendered 11/22/06 To be published.
COLWELL V. DRESSER INSTRUMENT DIV.

In this case, the Supreme Court changes the rules for re-opening a workers' compensation award. The Supreme Court in this case holds that where the claimant is totally disabled on re-opening, he needs to make a prima facie showing of an increase in "impairment", which is defined as loss of use of a body part or organ system, by objective medical evidence.

Link: http://www.kycases.com/2006/12/workers_comp_co.html (KY Cases)

CASE NO. 2004-SC-000937-DG, rendered 11/22/06 To be published.
ABNEY V. NATIONWIDE MUT. INS. CO.

The SC held that a release negotiated with one joint tortfeasor discharging "all other persons, firms or corporations liable, or who might be claimed to be liable" effectively release another joint tortfeasor who had not negotiated or paid any consideration for the release and this was not affected by the enactment of KRS 411 .182 (the apportionment statute).

Link: http://www.kycases.com/2006/12/releases_abney_.html (KY Cases)

CASE NO. 2004-SC-001090-DG, rendered 11/22/06 To be published.
HARRALSON V. MONGER

The plaintiff moved to amend his complaint out of time pursuant to CR 15.03 when, after depositions were taken, he learned that another party besides the named defendant was at least partially responsible for an automobile accident. The new defendant had given a statement to the police officer at the accident scene which made reference to the first defendant hitting him, then careening into other cars. At deposition, this new defendant stated that he had pulled into her lane, thus causing her to hit plaintiff and others' cars.

The trial court held that the new defendant had not intentionally concealed or misrepresented his actions, and thus the 2 year statute was not tolled. The Supremes disagreed, finding that the defendant had presented inaccurate information to the police officer on the scene. It noted that strictly enforcing the statute of limitation in spite of problematic silence, half-truths or omissions by a defendant would cause even more problems and resulted in the favoring of tolling the statute.

Their dissent contends that the majority incorrectly found the new defendant acted intentionally or fraudulently and argued that the holding stretched the purposes and meaning of CR 15.03.

Link: http://www.kycases.com/2006/12/civil_pro_harra.html (KY Cases)

CASE NO. 2005-SC-000544-DG, rendered 12/21/06 To be published.
MOORE V. GLOBE AMERICAN CASUALTY CO.

The SC affirmed the COA and the trial court's rulings that rejection of UM coverage was binding.

Link: <http://opinions.kycourts.net/SC/2005-SC-000544-DG.pdf> (SC)

CASE NO. 2006-SC-0320-WC, rendered 12/21/06 To be published.

JEFFERSON COUNTY PUBLIC SCHOOLS V. STEPHENS The SC affirmed the rulings by the WCB and the COA that the fall in which the claimant broke her hip was work-related, and that the burden of proof did not shift to the employer or otherwise misapply the law.

Link: <http://opinions.kycourts.net/SC/2006-SC-000320-WC.pdf> (SC)

CASE NO. 2005-SC-000153-DG, rendered 12/21/06 To be published.
DOWELL V. SAFE AUTO INS. CO.

The SC reversed and remanded the COA's affirmation of an opinion and order of the trial court which held that the UM statute does not require insurers to provide coverage for hit and run vehicles, and that insurers have no obligation to indemnify an insured for injuries caused by an unidentified motorist where liability insurance status cannot be determined. The trial court also held that the Safe Auto policy did not provide UM coverage in hit and run accidents.

Link: <http://opinions.kycourts.net/SC/2005-SC-000153-DG.pdf> (SC)