RECENT DEVELOPMENTS IN MOTOR VEHICLE ACCIDENT LITIGATION

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I. INTRODUCTION

This session is intended to be a review of the trial and appellate court cases involving motor vehicles in Kentucky during calendar year 2014, and 2015 to date. Included are published and unpublished cases from the Kentucky Supreme Court and Court of Appeals, a survey of Circuit Court trial verdicts, and cases involving Kentucky law from the federal Eastern and Western Districts of Kentucky.

Kentucky's appellate courts issued a number of important rulings this past year. In Nichols v. Zurich American Insurance Co., 423 S.W.3d 698 (Ky. 2014), the Supreme Court held that an employer's concession that it was vicariously liable under respondeat superior did not preclude a claim based on its own independent negligence: an employer's independent negligence in the hiring, training, retention, or supervision of an employee is conduct distinctly different from, and independent of, the negligence of the employee whose conduct directly caused the injury.

The Court of Appeals designated "to be published" its holding that in determining the priority of coverage between two uninsured (UM) policies, the policy covering the injured person should be deemed primary to the policy covering the vehicle, rejecting the mutual repugnancy rule and apportionment in UM conflicts. Countryway Insurance Company v. United Financial Casualty Co., 2012-CA-002051, 2014 WL 265508 (Ky. App. Jan. 24, 2014) – note the Supreme Court has granted discretionary review.

Other to-be-published holdings relevant to motor vehicle insurance include 1) an "owned but not scheduled for coverage" exclusion is unenforceable as against public policy, in Tryon v. Encompass Indemnity Co., 2013-CA-001275, 2014 WL 2536984 (Ky. App. Jun. 6, 2014); 2) UM coverage is applicable to every named insured listed on the policy with such coverage unless that named insured has individually signed a coverage waiver, in Boarman v. Grange Indemnity Insurance Co., 437 S.W.3d 748 (Ky. App. 2014); 3) the statute of limitations for a UIM claim accrues on the date the insurer denies coverage and communicates that to the insured, in Hensley v. State Farm Mutual Automobile Insurance Co., 2013-CA-000006 (Ky. App. Aug. 15, 2014); and 4) there is no requirement for expert medical or scientific proof for emotional distress claims brought under the Unfair Claims Settlement Practices Act, in Indiana Insurance Co. v. Demetre, 2013-CA-000338-MR, 2015 WL 393041 (Ky. App. Jan. 30, 2015) (property insurance facts).

Unpublished Court of Appeals cases dealt with a range of topics of interest to the MVA practitioner. Motorcycle UM/UIM coverage was at issue in two cases. Ballard v. State Farm Mutual Automobile Insurance Company, 2013-CA-001052, 2015 WL 300638 (Ky. App. Jan. 23, 2015), where the Court of Appeals affirmed a summary judgment for the UM insurer in holding a helmet is not an integral part
of a motorcycle, so the accident was not caused by a force projected by the hit-and-run vehicle and this provision of policy was not triggered. In Black v. Nationwide General Insurance Co., 2013-CA-001439, 2014 WL 4377902 (Ky. App. Sep. 5, 2014) the UIM insurer's summary judgment was upheld on the grounds that such coverage did not apply to a husband's non-covered motorcycle on which appellant was a passenger.


Immunity was also found for the Transportation Cabinet in its maintenance or inspection of "gore area" between highways and exit ramps. Kentucky v. Clayburn, 2012-CA-001680, 2014 WL 2154909 (Ky. App. May 23, 2014). Similarly, the decision not to place a guardrail and/or sign at the location where a one-car accident later occurred was also within the discretion of a county road crew. County of Boyd v. Quaffs, 2012-CA-001737, 2014 WL 2937784 (Ky. App. June 27, 2014).


Finally, the U.S. District Court for the Western District of Kentucky ruled that KRS 367.409(1), which forbids the solicitation of persons involved in MVAs (and their relatives) for thirty days after the accident for any service related to an MVA, is unconstitutional and unenforceable under federal law. State Farm Mut. Auto. Ins. Co. v. Conway, 3:13-CV-00229-CRS, 2014 WL 2618579 (W.D.Ky., June 12, 2014).

II. KENTUCKY SUPREME COURT DECISIONS

A. To Be Published

1. UIM coverage/mutual mistake.

Nichols v. Zurich American Insurance Co., 2012-SC-000317-DG, 423 S.W.3d 698 (Ky. 2014). This case arises out of a June 4, 2002 collision between Nichols, a truck driver for Indiana-based Miller Pipeline, and an automobile. The truck driver was seriously injured, but the automobile driver had $25,000 in liability limits. Miller Pipeline had a commercial fleet policy issued by Zurich American Insurance with an effective date of April 1, 2002, that included a UIM endorsement with $1 million limits.
In 2005, Nichols brought suit against Zurich in the Jefferson Circuit Court to recover his damages under the UIM coverage included in the Zurich policy. Zurich American obtained a summary judgment from that court, a judgment affirmed by the Court of Appeals, on the grounds that the UIM coverage in the policy was actually the result of a mutual mistake in the making of the insurance contract – that is, Miller Pipeline had actually intended to reject UIM coverage in its fleet policy.

The Supreme Court determined that reformation of the insurance contract was improper. To reform a written contract upon the equitable grounds of mutual mistake, the proponent of the reformation must 1) show that the mistake was mutual, not unilateral; 2) the mutual mistake must be proven beyond a reasonable controversy by clear and convincing evidence; and 3) it must be shown that the parties had actually agreed upon terms different from those expressed in the written instrument. Zurich American failed to establish the first element since "[t]here is no evidence that when it issued the policy on April 1, 2002, Zurich intended for the policy to exclude UIM coverage but mistakenly issued a policy that included UIM coverage. The evidence is that Zurich intended for the policy to exclude UIM coverage but mistakenly issued a policy that included UIM coverage. The evidence is that Zurich intended to issue a policy with UIM coverage because it had not been informed of Miller's desire to reject UIM coverage until after the accident occurred." This was simply a unilateral mistake by Miller Pipeline. The Supreme Court rejected the argument that the independent insurance broker's awareness of Miller Pipeline's wishes regarding the policy should be imputed to the insurer.

Additionally, not until long after Nichols had settled his claim with the tortfeasor for the $25,000 limits, did the Zurich official negotiating the claim with Nichols's counsel have knowledge that Zurich "knew" that Miller opted to reject UIM coverage and that Zurich had retroactively reformed the policy. An agreement may not be reformed on the basis of mutual mistake when rights of innocent third parties will be prejudiced. The Supreme Court concluded that the doctrine of mutual mistake was erroneously applied by the courts below; further, the lower courts' determination that Nichols was not entitled to summary judgment on the issue of UIM coverage was also in error.

Finally, while the trial court did not abuse its discretion in denying Nichols's motion to assert a statutory bad faith claim at the time, "it is appropriate that upon remand, the trial court shall re-evaluate Nichols's motion to amend the complaint and consider, in light of current circumstances, what 'justice so requires' under CR 15.01.
MV Transp., Inc. v. Allgeier, 433 S.W.3d 324 (Ky. 2014). MV operates a paratransit bus service in Louisville. Their bus is equipped with a wheelchair lift. In December 2006, Allgeier (now deceased) was a sixty-five-year-old passenger who used a wheelchair due to multiple sclerosis. In attempting to exit the bus, Allgeier could not see the bridge plate to the lift was not aligned; her wheelchair overturned, the driver released her safety belt, and she fell onto the lowered lift, splintering each of her femurs. Instead of calling immediately for emergency medical assistance, the driver first contacted her dispatcher; the dispatcher then notified MV supervisors, who arrived at the site about fifteen or twenty minutes after the accident occurred. EMS only arrived after Allgeier had been lying in intense pain on the freezing lift for forty minutes.

From the evidence presented at trial, a jury could reasonably conclude the driver had substantially departed from the company's unloading procedure. There was evidence the company's supervisors were lax in their training and enforcement of safety policies. Other evidence demonstrated that the driver was an alcoholic living in a rehabilitation facility when hired by MV several months before; the driver was tested for alcohol after the accident, but after the two-hour window in the company's protocol. (It was not alleged, and there was no evidence to indicate, that alcohol consumption played any role in the accident.)

In November 2007, Allgeier filed suit against MV, alleging that her injury was caused by the driver's gross and ordinary negligence for which MV was liable under the doctrine of respondeat superior. She also asserted that her injuries were caused by MV's own gross and ordinary negligence in the hiring, training, supervision, or retention of the driver.

Before trial, the company was granted summary judgment on punitive damages. The Jefferson Circuit jury found that MV was vicariously liable under the doctrine of respondeat superior for their driver's negligence. The jury also found the company liable for its own, independent negligence in hiring, training, supervising, or retaining its employee driver. Awarded $74,630.28 in medical expenses and $4.1 million in compensation for past, present, and future pain and suffering, Allgeier appealed the dismissal of her punitive damage claim, and MV cross-appealed from the trial judgment awarding compensatory damages, asserting evidence of the driver's alcoholism was improperly admitted.

The Supreme Court first held that the alcoholism evidence, including the driver's deceptive responses on her employment application, was properly admitted as impeachment evidence and the company's broader objection to the evidence was not adequately preserved.
Next, as a matter of first impression, the Supreme Court held that MV’s concession that it was vicariously liable under *respondeat superior* did not preclude a claim based on its own independent negligence. The court rejected the "preemption rule" found in some jurisdictions. The rationale behind the preemption rule is that allowing a claim based on an employer's direct negligence in hiring or supervising an employee to proceed concurrently with claims based upon *respondeat superior* is redundant, unduly prejudicial to the employer, and could lead to duplicative damage awards.

The court instead agreed with Allgeier's reasoning that an employer's independent negligence in the hiring, training, retention, or supervision of an employee is conduct distinctly different from, and independent of, the negligence of the employee whose conduct directly caused the injury. Citing the South Carolina Supreme Court's analysis in *James v. Kelly Trucking Co.*, 661 S.E.2d 329 (S.C. 2008), our high court held the "fundamental flaw" of the preemption rule is that a stipulation as to one cause of action could somehow "prohibit" completely the pursuit of another:

A plaintiff may, in a single lawsuit, assert many causes of action against a defendant. The considerations limiting a plaintiff's available causes of action in the typical case are that the plaintiff must be able to demonstrate a *prima facie* case for each cause of action and that a plaintiff may ultimately recover only once for an injury. *Allgeier* at 336, *quoting James* at 332. The court noted rejection of the preemption approach fits more consistently with Kentucky law, including our summary judgment standards, Civil Rule 8.01(1) ("[r]elief in the alternative or of several different types may be demanded") and Civil Rule 8.05(2) ("[a] party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or on equitable grounds or on both."). Accordingly, the Supreme Court held "that a plaintiff may assert and pursue in the same action a claim against an employer based under *respondeat superior* upon the agent's negligence, and a separate claim based upon the employer's own direct negligence in hiring, retention, supervision, or training. The employer's admission to the existence of an agency relationship from which vicarious liability may arise does not supplant the claim that the employer's own negligence, independent of the negligence of the employee, may have caused or contributed to the injury."

The Supreme Court then addressed punitive damages, finding that the trial court had erred in granting MV summary on that claim. The company argued first that the evidence at trial did not
support punitives, and second, that the Court of Appeals erred by remanding the case for trial only on that claim, contending that a trial limited to the issue of punitive damages violates KRS 411.186(1) and §7 of the Kentucky Constitution.

Noting first that an employer may be liable for punitive damages based on the conduct of its employees, the Supreme Court held sufficient evidence was presented at trial to establish the driver, in conjunction with the company’s other employees, engaged in conduct that a reasonable jury could have found to be negligence accompanied by wanton or reckless disregard for Allgeier’s life and safety. Further, a reasonable jury could properly conclude from Allgeier’s evidence, pursuant to KRS 411.184(3), that MV had ratified, authorized, or should have anticipated its driver’s conduct.

Next, the Supreme Court held a remand for retrial solely on punitives is not prohibited by statute or the Kentucky Constitution. Such a retrial poses no risk of conflicting or overlapping verdicts. To argue that KRS 411.186(1), in providing that "[i]n any civil action where claims for punitive damages are included, the jury or judge if jury trial has been waived, shall determine concurrently with all other issues presented, whether punitive damages may be assessed" requires a retrial of all claims would lead to "an absurd and unreasonable result." Further, it would be "fundamentally inequitable to require Allgeier to forfeit her compensatory damages verdict as a precondition for obtaining what she should have had in the first place – a jury’s determination of whether she is entitled to punitive damages." The Supreme Court then remanded to the Jefferson Circuit Court for a trial on that issue.

3. Directed verdict/presumption of negligence.

Wright v. Carroll, 452 S.W.3d 127 (Ky. 2014). As appellant truck driver entered a blind curve on a two-lane road, he encountered a number of vehicles stopped in his lane waiting to turn left. He braked and steered right, towards the ditch to avoid rear-ending them. Unfortunately his brakes locked and his trailer swung into the opposing lane, striking appellee's vehicle and leading to serious injury.

Appellee filed suit in Elliot Circuit Court against the trucker and the trucking company, alleging negligent maintenance and operation of the tractor-trailer. In the first trial, the jury was instructed on the sudden-emergency doctrine and returned a defense verdict. After the Court of Appeals held that the doctrine did not apply to encounters with vehicles properly stopped to turn at the intersection, the case was remanded. In the second trial, the jury was not instructed on the sudden-emergency doctrine, but it was also not instructed on the trucker’s duty to stay in the right lane, and returned another defense verdict. A second appeal resulted in
the Court of Appeals holding the trial court should have granted the plaintiff's motion for directed verdict and issuing an order that the case be retried on damages only.

On the Supreme Court's discretionary review, the trucker and trucking company argued that the Court of Appeals erred by violating the law-of-the-case doctrine, by applying an improper standard of review and misstating material facts, and misconstruing KRS 189.300(1) on keeping to the right.

The general principle of the law-of-the-case is that a court addressing later phases of a lawsuit should not reopen questions decided by that court or by a higher court during earlier phases of the litigation. In Carroll I, the Court of Appeals held that it was improper for the jury to be instructed on the sudden emergency doctrine. However, the court added, "on the other hand, Carroll was not entitled to a directed verdict. The trial court correctly ruled that the issue of whether Wright had been negligent in failing to slow down before the curve, or whether he was driving too fast in the first place, was a question for the jury." Appellants contend that because of those two sentences, it was improper for the Court of Appeals to hold that a directed verdict should have been granted in favor of Carroll in the second trial.

The Supreme Court disagreed, stating that Court of Appeals merely held in Carroll I that questions about Wright's speed of travel were properly submitted to the jury. Because the testimony was significantly different in the second trial, the law-of-the-case doctrine did not preclude the Court of Appeals from determining whether a directed verdict should have been granted after the second trial.

The Supreme Court then determined it was proper for the Court of Appeals to hold that a directed verdict should have been granted for the plaintiff during the second trial. Although the standard of review is strict, the Court of Appeals correctly noted and applied it. Likewise, the court did not misstate the material facts. A long line of case law holds that when a motorist is on the wrong side of the road at the time of a collision with a vehicle traveling in the opposite direction, this is prima facie proof of negligence. Given that the presence of stopped vehicles waiting to turn was a normal traffic condition that Wright could have reasonably anticipated, "it is clear from the evidence that Wright did not comply with his duties to keep a lookout and operate his vehicle carefully."

In Carroll II, the Court of Appeals cited KRS 189.300(1) to support the proposition that Wright had a specific statutory duty to travel on the right side of the highway:
The operator of any vehicle when upon a highway shall travel upon the right side of the highway whenever possible, and unless the left side of the highway is clear of all other traffic or obstructions for a sufficient distance ahead to permit the overtaking and passing of another vehicle to be completed without interfering with the operation of any vehicle approaching from the opposite direction or any vehicle being overtaken. The overtaking vehicle shall return to the proper traffic lane as soon as practicable and, if the passing vehicle enters the oncoming traffic lane, before coming within two hundred (200) feet of any approaching vehicle.

Appellants contended the Court of Appeals misconstrued the statute to impose a strict liability duty to drive in the right lane no matter the circumstances. The Supreme Court held this argument was immaterial, as there was enough evidence to grant a directed verdict based on the common law general duty to drive in the right lane. A specific statutory violation by Wright could have strengthened the case for a directed verdict, but was not essential to it.

Accordingly, Supreme Court affirmed the Court of Appeals' opinion, and remanded to the Elliott Circuit Court for retrial on the issue of damages.

B. Not to Be Published

Venue/KRS 452.105/writ of prohibition

Sandlin v. Miniard, 2014-SC-000322-MR, 2015 WL 737116 (Ky. Feb. 20, 2015). Sandlin, a resident of Russell County, was injured in a car wreck in Marion County and settled with the tortfeasor. When his UM/UIM insurer, Kentucky Farm Bureau, denied his claim, Sandlin sued in Russell Circuit Court for UIM benefits and bad faith.

KFB moved to dismiss on grounds of improper venue in Russell County. As an alternative, the motion argued that venue should be transferred either to Marion County, the site of the car wreck, or to Jefferson County, the site of Kentucky Farm Bureau's principal place of business. The trial court granted the alternative relief and transferred the case to Marion Circuit Court. Arguing he would suffer immediate and irreparable injury by litigating sixty miles away, Sandlin petitioned the Court of Appeals for a writ of prohibition. Denied this relief, he then appealed to the Kentucky Supreme Court.

The Supreme Court pointed to the strict standard set out in Hoskins v. Maricle, 150 S.W.3d 1 (Ky. 2004): a writ of prohibition may be granted only upon a showing that (1) the lower court is proceeding or is about to
proceed outside of its jurisdiction and there is no remedy through an application to an intermediate court; or (2) that the lower court is acting or is about to act erroneously, although within its jurisdiction, and there exists no adequate remedy by appeal or otherwise and great injustice and irreparable injury will result if the petition is not granted.

Sandlin's petition is not in the first category since complaints about venue are not complaints of lack of jurisdiction; the circuit court had subject-matter jurisdiction over his case. Further, KRS 452.105 mandates a trial court transfer a case upon the determination that the venue selected is improper; the court's transfer of the case was expressly authorized by statute. Any claim of error in applying the statute is a claim of legal error, not a claim of lack of jurisdiction. Such a claim of error can only be addressed on appeal. Because Sandlin cannot show the lack of an adequate remedy by appeal, a writ of prohibition is not available under the second class of cases identified in Hoskins. Since Sandlin failed to show the availability of a writ in his case, the Supreme Court affirmed the order of the Court of Appeals denying the petition.

III. KENTUCKY COURT OF APPEALS DECISIONS

A. To Be Published

1. Priority of UM coverage.

   Countryway Ins. Co. v. United Financial Cas. Co., 2012-CA-002051, 2014 WL 265508 (Ky. App. Jan. 24, 2014). Order of Warren Circuit Court reversed, Court of Appeals holding that in determining the priority of coverage between two uninsured (UM) policies, the policy covering the injured person should be deemed primary to the policy covering the vehicle, rejecting the mutual repugnancy rule and apportionment in UM conflicts. The Kentucky Supreme Court has granted discretionary review.


   Estate of Morris v. Smith, 2012-CA-001503, 2014 WL 1998726 (Ky. App. May 16, 2014). Court of Appeals affirms order of Graves Circuit Court granting summary judgment to members of Graves County Fiscal Court, including the judge executive individually, and the road foreman, individually, on basis of official immunity. In 2007, decedent was one of seven teenagers in car that failed to negotiate sharp curve on Dooms Chapel Road in dark and rain. Estate sued for negligence in not providing warning signs at the curve. Held decision not to install warning sign at location was discretionary and not ministerial, as state law implementing the Manual on Uniform Traffic Control Devices for Streets and Highways did not create the duty requiring signage at particular location, but left to discretion of authorities; no objective bad faith either, as there were not prior accidents at curve nor any complaints about that stretch of road. Pending motion for discretionary review in the Kentucky Supreme Court.
3. **UIM coverage exclusion/public policy.**

Tryon v. Encompass Indem. Co., 2013-CA-001275, 2014 WL 2536984 (Ky. App. Jun. 6, 2014). Court of Appeals reverses Jefferson Circuit Court's order granting summary judgment to UIM insurers. Motorcyclist struck by automobile. Motorcycle covered under Nationwide policy; owner also had a Lexus ensured through Encompass and an antique Firebird insured through Philadelphia Indemnity. All three policies include UIM, but both automobile policies excluded UIM coverage for other vehicles owned by insured if not insured with that insurance company. Determining Chaffin v. Kentucky Farm Bureau Ins. Co., 789 S.W.2d 754 (Ky. 1990) and Allstate Ins. Co. v. Dicke, 862 S.W.2d 327 (Ky. 1993) to be controlling precedent, the Court of Appeals held the "owned but not scheduled for coverage" exclusion is unenforceable as against public policy and remanded. Pending motion for discretionary review in the Kentucky Supreme Court.

4. **Sudden emergency/expert testimony.**

Werner Enterprises Inc. v. Northland Ins. Co., 437 S.W.3d 730 (Ky. App. 2014). Court of Appeals affirms Webster Circuit Court jury verdict for plaintiffs as well as third-party defendant in case arising from collision on Pennyrile Parkway. Three tractor-trailers collided; all three vehicles were traveling in the right-hand lane when three coal trucks passed them in the left-hand lane. When the coal trucks moved back into the right-hand lane after passing, they hit a bump in the road and caused a cloud of dust to be kicked up into the air, impairing the visibility of the operators of the three vehicles. The first truck slowed to move onto the shoulder when it was struck by the middle truck. The last truck then struck the middle truck. The Court of Appeals upheld the expert testimony of a state trooper concerning the human factors involved; it also rejected the argument that the presence of a sudden emergency eliminates the duty of care and necessitates a directed verdict: "To the contrary, Kentucky law is clear that the determination of whether a party breaches a duty of care, with or without the presence of a sudden emergency, is a question of fact for the jury. [...] In the case at bar, the jury was properly instructed on the sudden emergency and was charged with deciding whether they believed Whobrey's conduct was a reasonable response to the circumstances. Based on the evidence as a whole, the trial court did not err by denying Werner's motion for a directed verdict [...]"

5. **UIM/waiver of coverage.**

Boarman v. Grange Indem. Ins. Co., 437 S.W.3d 748 (Ky. App. 2014). Court of Appeals reverses and remands Daviess Circuit's order of summary judgment granted to UM insurer. In matter of first impression, held UM coverage is applicable to every named insured listed on the policy with such coverage unless that named insured has individually signed a coverage waiver.

Hensley v. State Farm Mut. Auto. Ins. Co., 2013-CA-000006, 2014 WL 3973115 (Ky. App. Aug. 15, 2014). Court of Appeals reverses and remands Jefferson Circuit Court order granting summary judgment to UIM carrier on grounds claim had been time-barred. In matter of first impression, the Court of Appeals held the statute of limitations for a UIM claim accrues on the date the insurer denies coverage and communicates that to the insured. Also held that contractual provision that would work to cut off insured's right to file a breach of contract suit against foreign insurer for UIM benefits, prior to a year from the date of breach, was unreasonable and unenforceable. Pending motion for discretionary review in the Kentucky Supreme Court.

7. KRS 446.070/road rage/evidence of injury.

Readnour v. Gibson, 452 S.W.3d 617 (Ky. App. 2014). In a case arising out of a road rage incident, the Court of Appeals upholds the Kenton Circuit Court's grant of summary judgment to defendants. While KRS 446.070 provides that "[a] person injured by the violation of any statute may recover from the offender such damages as he sustained by reason of the violation," it was not applicable with respect to bare allegation that the appellees violated provisions of the insurance code and there was no criminal adjudication of guilt. Further, pro se appellant failed to present sufficient evidence to show he suffered any injury as a result of appellees' actions, precluding recovery.

8. UM coverage under Tennessee law.

Grange Property and Cas. Co. v. Tennessee Farmers Mut. Ins. Co., 445 S.W.3d 51 (Ky. App. 2014). Court of Appeals affirms Pike Circuit Court's judgment in favor of employee's insurer. Employee injured in collision with uninsured motorist while driving employer's vehicle. Under the "most significant relationship" test Tennessee law applied to determine the priority of UM coverage between the employer's and employee's policies; under this law the employer's coverage was found to be primary. Further, under Tennessee law, the secondary coverage under the employee's personal policy was extinguished since the employee had collected over $100,000.00 in workers' compensation benefits.


not affirmative evidence sufficient to defeat a properly supported motion for summary judgment. The insurer's liability for paying the claim was not beyond dispute, as required for liability under the UCSPA, where evidence of record supported that there had been a genuine dispute at all relevant times regarding who had been liable for causing the accident and what injuries, if any, the accident had inflicted upon claimant. Pending motion for discretionary review in the Kentucky Supreme Court.

10. Dram Shop Act/"hold harmless" provision in settlement.

_Butt v. Independence Club Venture, Ltd._, 453 S.W.3d 189 (Ky. App. 2014). Court of Appeals affirms Jefferson Circuit Court's grant of summary judgment to drinking establishment sued by survivors of accident under Dram Shop Act. Earlier settlement with driver had included a "hold harmless" provision that effectively nullified dram shop liability: "Plaintiffs are precluded from any recovery against Electric Cowboy because it would then be entitled to indemnity against King for the amount of any recovery, and Plaintiffs would be required to hold King harmless to the extent of the indemnification." "We believe that there is no conclusion that can be reached other than any cause of action against Appellee is moot because there ultimately can be no recovery of damages."

11. Reparation benefits/quantum meruit claim for attorney fees.

_Chambers v. Hughes & Coleman, PLLC_, 2013-CA-002074, 2015 WL 602820 (Ky. App. February 13, 2015). Court of Appeals reverses judgment of Hardin Circuit Court in case involving attorney-fee dispute between old and new attorneys for man injured in MVA. Former attorneys had received $20,000 in basic and added reparation benefits, disbursed only a small amount to client and held the remainder for dispersal at its own discretion, despite no such agreement with client. Client obtained full reparation benefits from old attorneys upon firing them; former attorneys later filed suit in quantum meruit for share of full MVA settlement obtained by new attorney. Court of Appeals held old attorneys were terminated for cause and so not entitled to fee due to conduct regarding the no-fault benefits.


stress, worry, anxiety or mental anguish and $2.5 million in punitive damages. Court of Appeals found Campbell Circuit Court did not err in: 1) not granting insurer's motion for directed verdict and JNOV; 2) determining the evidence of emotional distress was sufficient to support an award; 3) setting out the jury instructions on tort damages for breach of contract and the standard for emotional distress; 4) excluding the testimony of two defense witnesses not timely disclosed; 5) amount of punitive damages.

Most significantly: "The possibility of damages for emotional distress is a strong deterrent to bad faith actions by an insurance company and may be the only deterrent to unfair and deceptive practices. For the reasons stated, we decline to extend Osborne's [Osborne v. Keeney, 399 S.W.3d 1 (Ky. 2012)] requirement that emotional distress be proven by expert medical or scientific proof to claims brought pursuant to the Unfair Claims Settlement Practices Act. In such cases, emotional distress may be proven by direct or circumstantial evidence, including the plaintiff's testimony alone."

B. Not to Be Published


Barrett v. Elmo Greer & Sons, LLC, 2012-CA-001943, 2014 WL 272561 (Ky. App. Jan. 24, 2014). Court of Appeals upholds Jackson Circuit Court's granting of summary judgment for defendant in one-vehicle accident at the intersection of Highway 3444 and the new Highway 30, under construction at the time. Estate sued, alleging defendant had negligently caused the road surface at the accident site to be torn up and resurfaced, resulting in numerous large potholes in the roadway. The trial court properly granted summary where the purported causation was based only on a chain of inferences, i.e. "mere speculation," that: "(1) potholes existed upon the road, (2) Barrett's motor vehicle hit a pothole, and (3) upon hitting the pothole, Barrett lost control of the motor vehicle leading to the accident."

2. Closing argument.


3. False imprisonment/private detention of intoxicated driver after MVA.

detained intoxicated plaintiff following collision between their vehicles on farm road. Court of Appeals held that "Riester's detention of Carpenter was not unlawful. It cannot be argued that a person in an advanced state of intoxication who gets behind the wheel of a motor vehicle does not present the real possibility of causing serious physical injury to himself or another person, and/or substantial damage to property. Accordingly, no action for false imprisonment can be maintained in this case."

4. Revival of personal injury action/equitable estoppel.


5. Proof of future medical expenses/pain and suffering damages.

Curtis v. Grigsby, 2013-CA-000676, 2014 WL 891276 (Ky. App. Mar. 7, 2014). Court of Appeals upholds Perry Circuit Court judgment granting appellant $3,600 in past medical expenses only. As plaintiff's physician did not testify about the type, frequency, or cost of treatment needed in the future as a result of the accident, the trial court properly excluded damages for future medical expenses. Appellant also argued it was error for the jury to fail to award pain and suffering damages in conjunction with past medical expenses; although the issue was not preserved for review, the Court of Appeals noted "the Kentucky Supreme Court examined the issue of whether a jury is required to award damages for pain and suffering in every case in which it awards medical expenses and answered that question in the negative."

6. Qualified official immunity/police pursuit.

Plummer v. Lake, 2012-CA-001559, 2014 WL 1513294 (Ky. App. Apr. 18, 2014). Court of Appeals upheld Garrard Circuit's summary judgment on qualified official immunity in favor of police officers and the City of Lancaster and its police department in death action arising out of head-on collision by subject of police pursuit. The decision to discontinue a pursuit is logically an extension of the officers' judgment and not separable from the decision to stop and pursue. No statutory or case law imposes a duty on police officers to "contain" a suspect. Motion for discretionary review in the Kentucky Supreme Court denied.

7. Dram shop/"liquor liability" exclusion.

declaratory judgment action to pay for costs and attorneys' fees incurred in successfully defending a dram-shop liability claim arising from death of pedestrian struck by car on Nicholasville Road in Lexington, where both pedestrian and driver had been drinking at appellant's pub. The pub's general insurance policy contained a "liquor liability" exclusion that meant the insurer had no duty to defend or indemnify in the underlying tort claim. Pending motion for discretionary review in the Kentucky Supreme Court.

8. Board of Claims jurisdiction/roadside maintenance.

**Kentucky v. Clayburn**, 2012-CA-001680, 2014 WL 2154909 (Ky. App. May 23, 2014). Court of Appeals reversed and remanded to Jefferson Circuit Court with instructions to remand to Board of Claims to dismiss for lack of jurisdiction. Driver was forced off the road while attempting to merge onto I-264 West, striking debris from highway sign knocked down earlier. Court of Appeals held that maintenance or inspection of this "gore area" (the triangular piece of land located between Interstate Highway 65 South and the exit ramp to Interstate Highway 264 West) constitutes a discretionary act, precluding Board of Claims jurisdiction. Pending motion for discretionary review in the Kentucky Supreme Court.


**Estepp v. Peters**, 2012-CA-000943, 2014 WL 2640607 (Ky. App. Jun. 13, 2014). Court of Appeals upheld Rockcastle Circuit dismissal where plaintiff filed just within statute of limitations but originally named mother of deceased driver instead of driver, estate, or administrator. Although mother was policyholder and owner of decedent's vehicle, she was not tortfeasor and so her insurer had no duty to pay claim on her behalf, rendering amended complaint against insurer untimely as well. Additionally, Appellant failed to timely appeal from order with finality language dismissing estate's administrator; did timely appeal from another order dismissing another driver and owner of that driver's car, but did not raise any claim of error related to that order.


**Larimore v. Travelers Ins. Co.**, 2013-CA-000064, 2014 WL 2632143 (Ky. App. Jun. 13, 2014). Court of Appeals reverses a summary judgment in an action for bad faith and violation of the Unfair Claims Settlement Practices Act. Appellant and one son seriously injured, another son killed, in accident when a car crossed the centerline and struck them head-on. Although UIM coverage carried, insurer did not pay the claim until nineteen months after the accident, after counsel retained and suit filed. Court of Appeals held the Jefferson Circuit Court erred in finding that there were no material issues of fact as Appellants had introduced evidence, including expert testimony, creating a
genuine factual issue in which a jury might find that insurer acted in bad faith, intentionally committed misconduct emanating from an evil motive, or acted with reckless indifference to their rights. Remanded. Pending motion for discretionary review in the Kentucky Supreme Court.

11. County immunity/roadway construction and maintenance.

County of Boyd v. Quaffs, 2012-CA-001737, 2014 WL 2937784 (Ky. App. Jun. 27, 2014). Court of Appeals reverses order denying summary judgment, and remands to Boyd Circuit Court with instructions to enter an order granting summary judgment to defendants in case where driver alleged one-car accident on Hall Ridge Road and subsequent injuries were due to negligence of Boyd County road supervisor and road crew in constructing and maintaining roadway. Court of Appeals found the decision not to place a guardrail and/or sign at the location in question was discretionary since based on the consideration of fiscal factors, availability of materials, and the necessity of placing it at that particular location, as opposed to other locations.

12. Qualified official immunity/police pursuit.

Jones v. Bennett, 2012-CA-001780, 2014 WL 3026440 (Ky. App. Jul. 3, 2014). Court of Appeals affirms the granting of summary judgment to Russell County, sheriff, and sheriff's deputy in action arising out of an automobile accident when the sheriff's deputy collided with plaintiff's vehicle while pursuing a suspected drunk driver. The deputy's actions were discretionary and so entitled him to qualified official immunity. Pending motion for discretionary review in the Kentucky Supreme Court.

13. Board of Claims/roadway defect.

Com., Transp. Cabinet, Dept. of Highways v. Bunch, 2012-CA-01633, 2014 WL 3547368 (Ky. App. Jul. 18, 2014). Court of Appeals reverses Jefferson Circuit Court's judgment affirming the Board of Claims’ Final Order holding the Highway Department liable for creating an unreasonable danger to motorists that resulted in injury. Bunch was a motorcyclist who was injured while riding his motorcycle on the Greenbelt Highway in Louisville; he claimed he struck a section of an improperly repaired pothole patch causing him to lose control and crash. The Court of Appeals held the Board of Claims failed to make a finding regarding the notice element; the Board could not properly establish liability without first making a factual determination that the Department had notice of the alleged defect in the road.

Embry v. State Farm Mut. Ins. Co., 2013-CA-000167, 2014 WL 3548280 (Ky. App. Jul. 18, 2014). Court of Appeals reverses and remands Jefferson Circuit Court’s grant of summary judgment to UM insurer that had sued the alleged tortfeasor in subrogation. The Court of Appeals held the defendant had met the burden of providing affirmative evidence to defeat a summary motion through her “detailed sworn answers to interrogatories that were part of the record. […] Whether Embry’s account or [insured’s] account should be believed is a question for the jury” precluding summary judgment.

15. Negligence per se/KRS 189.378 on funeral procession.

Wallin v. Carriage Funeral Services of Kentucky, Inc., 2013-CA-000910, 2014 WL 3548564 (Ky. App. Jul. 18, 2014). Court of Appeals upholds Lawrence Circuit Court’s dismissal of negligence per se claim against funeral home arising out of collision during course of funeral procession. Holds that while KRS 189.378 states a procession is formed when "each vehicle has its headlights on or is displaying a pennant attached in such a manner as to be clearly visible to approaching traffic" the statutory language does not impose a duty on a funeral home to place flags or other identifying objects on vehicles or to illuminate the headlights of vehicles traveling as part of a funeral procession. Appellants also argued a common-law duty existed, but as this was raised for the first time on appeal the Court of Appeals did not address it. See also companion case of Christian v. Steen Funeral Home, 2013-CA-001296, 2014 WL 4667326 (Ky. App. Sept. 19, 2014), discussed infra.

16. Board of Claims/indispensable party to appeal.

Frausto v. Com., Transp. Dept., 2012-CA-001055, 2014 WL 4049890 (Ky. App. Aug. 15, 2014). Court of Appeals affirms dismissal by Green Circuit for failure to name indispensable party in appeal of Board of Claims action by driver and passengers who collided with an automobile-damaging "river of water" on Highway 61. The Board of Claims issued a Final Order in favor of the highway department; this order advised the Fraustos of their right to an appeal, but stated "the Board is a necessary party to the appeal." The appeal was timely made, but named the Transportation Department as the sole defendant. The Court of Appeals held the Green Circuit Court was required to dismiss the complaint, as a specific condition precedent to its exercise of jurisdiction was not satisfied.
17. Church liability for youth minister conduct/abandonment and loss of consortium/punitive damages.

*Big Spring Assembly of God, Inc. v. Stevenson, 2012-CA-001350 & 2012-CA-001423, 2014 WL 4267433 (Ky. App. Aug. 29, 2014).* Court of Appeals affirms Nelson Circuit judgment where youth minister allowed thirteen-year-old to drive car to camp, leading to accident and the youth's death. Upheld verdict where church found not vicariously liable since youth minister acting outside the scope of his employment, but nonetheless directly liable for his negligent hiring, supervision, or retention. The tort does not require the youth minister's conduct be on the church's premises or for him to use the church's chattels. Further, being in arrears on child support did not preclude the child's father's loss of consortium claim, as "abandonment" under KRS 411.137. However, in the cross-appeal of the denial of punitive damages, the mere failure to terminate an employee is not tantamount to ratification of that employee's prior misconduct within the meaning of KRS 411.184(3). Church not vicariously liable for youth minister's outrageous conduct in perpetuating deception that he, not the decedent, was behind the wheel at the time, upholding directed verdict for church. Pending motion for discretionary review in the Kentucky Supreme Court.

18. UIM coverage/motorcycle passenger.

*Black v. Nationwide General Insurance Co., 2013-CA-001439, 2014 WL 4377902 (Ky. App. Sep. 5, 2014).* Court of Appeals affirms Jefferson Circuit Court's grant of summary judgment to insurer of couple's automobiles, on grounds that UIM coverage did not apply to husband's non-covered motorcycle on which appellant was a passenger at time of collision.


*Adams v. Tokio Marine & Nichido Fire Insurance Co., Ltd., 2013-CA-001068, 2014 WL 4525167 (Ky. App. Sep. 12, 2014).* Court of Appeals dismissed as interlocutory an appeal from Scott Circuit order dismissing UM and UIM insurer on grounds of failure to state a claim upon which relief may be granted, where order adjudicated less than all the claims against all parties, and the trial court did not state that its order was final and that there was no just reason for delay.


1987), that funeral home owed general common law duty of care to participants in a funeral procession, as KRS 189.378 does not place a duty on funeral homes but rather on drivers in the funeral procession and the other drivers on the road who come into contact with a funeral procession. This statute has addressed the duty relevant to funeral processions and obviated any reliance on common law. Lawrence Circuit Court affirmed.


Chance v. Mary Queen of Heaven Parish, 2013-CA-000607, 2014 WL 4802904 (Ky. App. Sep. 26, 2014). Court of Appeals upholds Boone Circuit Court’s grant of summary judgment to defendants, Roman Catholic parish and diocese, in pedestrian/auto accident on Donaldson highway as appellant and decedent were returning to their parked car after attending parish festival. As the pedestrians were not on appellees' property at the time of the accident, there was no premises liability. Further, there was no evidence the risk was both foreseeable and unreasonable, as required to recover under the general negligence theory. Further, "[e]ven if MQH was aware that some invitees were parking along Donaldson Highway and walking to the festival, it had no control over the road or the invitees' decisions to park on the road and walk rather than using the shuttle service provided."

22. Dram shop liability/preservation of error.

Gore v. Double D Bar, LLC, 2012-CA-001283, 2014 WL 5314696 (Ky. App. Oct. 17, 2014). Court of Appeals affirmed judgment of McCracken Circuit Court finding drunk driver, but not bar that served him, liable for couple's injuries from car accident. By not identifying on their strike sheets the specific jurors they would have removed through peremptory challenges had the court struck certain jurors for cause, appellants failed to preserve the issue of the alleged error of the trial court in failing to remove said jurors.

23. Governmental immunity/transit authority.

Transit Authority of River City v. Taylor, 2013-CA-000556, 2014 WL 5315093 (Ky. App. Oct. 17, 2014). Court of Appeals affirms Jefferson Circuit Court's denial of summary judgment to TARC, as the transit authority provides services that are purely local and proprietary in nature, does not carry out functions integral to state government, and therefore is not entitled to governmental immunity. Pending motion for discretionary review in the Kentucky Supreme Court.

Masterson v. Siemens Industry, Inc., 2013-CA-000014 & 2013-CA-000050, 2014 WL 5489304 (Ky. App. Oct. 31, 2014). Court of Appeals affirms in part, and reverses in part, Jefferson Circuit Court. After rear-end accident, driver sued rear driver of company-owned car and rear-driver's employer, alleging a herniated disk. Jury found injuries to be preexisting in face of conflicting evidence; as the jury had information upon which to base its decision, the Court of Appeals held its determination must stand. Further, the trial court acted within its discretion in limiting the pain and suffering to specific dates from which the jury could conclude he had pain and suffering from the automobile accident. On the cross appeal, the Court of Appeals held the trial court had erroneously used workers' compensation law to determine not to bifurcate, exclude, or dismiss the vicarious liability claim against the employer. The Court of Appeals also held that on retrial a sudden emergency instruction should be given, as the rear driver had been faced with a blinding sheet of water suddenly engulfing his windshield. Pending motion for discretionary review in the Kentucky Supreme Court.

25. Parking lot/reasonable risk of harm/summary judgment.

Calhoun v. Fruit of the Loom, Inc., 2013-CA-000422, 2014 WL 6092547 (Ky. App. Nov. 14, 2014). Court of Appeals affirms Russell Circuit Court's grant of summary judgment to company whose employee was injured while riding his motorized scooter across the parking lot and into poles and cables instead of using the marked roadway. "Here, the record reveals the bright yellow poles and cables had been in place for more than fifteen years prior to January 16, 2011. No complaints had been registered concerning their presence, nor had any claims for injuries or damages been levied. Calhoun admitted he had intentionally left the marked roadway to avoid a set of speed bumps and failed to observe the rope or cable strung between the posts until he was very close to striking it. Nothing in the record indicates the barrier's location, construction or maintenance created an unreasonable risk of harm apart from Calhoun's unsupported and self-serving allegations in his complaint."

26. Workers' compensation as exclusive remedy/UIM benefits.

Crocker et al. v. Coleman, 2013-CA-000078, 2014 WL 7013361 (Ky. App. Dec. 12, 2014). Court of Appeals affirms order of Warren Circuit Court granting summary judgment to appellees in determining workers' compensation afforded the exclusive remedy for appellants' injuries suffered in truck accident during course and scope of their employment. Further, UIM benefits could not be received from decedent's UIM carrier as the estate was not
"legally entitled to recover" from the "owner or operator of an underinsured motor vehicle."

27. Summary judgment/substance on roadway.

Miller v. Consol of Kentucky, Inc., 2013-CA-001559, 2014 WL 7012879 (Ky. App. Dec. 12, 2014). Court of Appeals affirms Letcher Circuit Court's entry of summary judgment to appellees, in case where motorist alleged his one-car accident was due to oily, glistening substance on Route 1469. The appellate court noted that there was no accurate way to determine what vehicle, if any, allowed water and/or other fluids to escape upon the roadway and in what amounts, in the absence of any such evidence, holding "Kentucky law is clear that conclusory allegations based upon conjecture and speculation is not sufficient to create an issue of fact to defeat summary judgment."


29. Summary judgment/accident reconstructionist/res ipsa loquitur.

Gilbert v. U-Haul International Inc., 2013-CA-000772, 2015 WL 136140 (Ky. App. Jan. 9, 2015). Court of Appeals upholds summary judgment granted by Scott Circuit Court in favor of defendant driver sued by passenger (his wife) as result of striking highway median wall while driving truck with U-Haul trailer attached. Suit against trailer manufacturer and rental company settled earlier. Court of Appeals held, despite conclusory affidavit from wife's accident reconstructionist, "[w]hatever the true reason for the accident, the possibility that it may have occurred without any negligence on the part of Tom precludes application of the doctrine of res ipsa loquitur. The fact that the collision occurred does not justify an inference of negligence."

30. Road contractor's compliance with KDOT plans and specifications.

Eaton Asphalt, as a contractor with the KDOT, when performing its duties at the construction site in compliance with plans and specifications mandated by the Commonwealth, cannot be liable for decedent's death "in the absence of a negligent or a willful tortious act."

31. Helmet not integral part of motorcycle/UM hit-and-run coverage.


32. Discovery of psychotherapy records.

Motorists Mutual Insurance Co. v. Thacker, 2013-CA-000147, 2015 WL 544872 (Ky. App. Feb. 6, 2015). Court of Appeals reverses Pike Circuit judgment awarding Thacker $1.9 million in UIM benefits for injuries sustained in Florida as insurer was entitled to discover her psychotherapy records as her claims included mental distress. Remanded for new trial.

IV. KENTUCKY TRIAL COURT CASES

Data from the Kentucky Trial Court Review: 2014 Year in Review

In 2014, as in 2013, there were few significantly high verdicts. In November, a Jefferson Circuit jury awarded $1,266,415 in the case of a motorcyclist who lost control and died after being clipped by a taxi. This included $800,000 for the consortium interest of the decedent's seventeen-year-old son. Mitchell v. Yellow Cab et al., Jefferson Circuit Court, 12-CI-5927 (November 3, 2014). Also in Jefferson County, a TARC bus driver ran a red light and stuck a car, resulting in a $680,171 judgment, including $450,000 for pain and suffering. Neumann v. TARC, Jefferson Circuit Court, 13-CI-194 (May 15, 2014).

Punitive damages were awarded in one case, Kash v. Sapp, Menifee Circuit Court, 13-CI-90079 (October 14, 2014), against an intoxicated driver who had crossed the center line.

Of the thirty-two cases surveyed, there were sixteen defense verdicts – thirteen finding no liability or causation and three threshold cases where the jury determined the plaintiff had not incurred at least $1,000 in medicals. Medicals only were recovered in six of the other sixteen cases, in several the jury's verdict appeared to be less than the PIP set-off, and in another the verdict was less than the threshold of UIM coverage. In two UIM cases the jury verdict surpassed the policy limits.
Vehicles involved included trucks (five), buses (four), motorcycles (two), and one street sweeper (it hit a bus). Rear-end collisions appeared fifteen times.

Interesting cases include:

A. **Reyes v. Allstate**, Fayette Circuit Court, 10-CI-6063, March 11, 2014. Mother and fifteen-month-old son in hard collision with another vehicle, mother had minor injuries but son was initially unresponsive (although actually not seriously injured and made full recovery). Mother suffered severe emotional distress from belief she was witnessing her son's death. After taking tortfeasor's available limits ($15,000, after other injured people in his vehicle), mother sought UIM coverage from insurer; jury verdict of $171,738, after set-offs for tortfeasor settlement and PIP, was higher than UIM policy limits.

B. **Jones v. Pattie Clay Hospital et al.**, Madison Circuit Court, 10-CI-1124, February 27, 2014. In this the plaintiff was struck in a rear-end collision, went to the hospital to get checked out, but passed out and hit the floor while standing during x-ray, sustaining a complex orbital socket fracture. The rear driver denied fault, and noted plaintiff had not been in pain when he arrived at the ER. The hospital's expert testified as he showed no dizziness, it was reasonable to allow him to walk to the x-ray and stand, although the hospital did offer him a chair for the procedure. The jury entered a verdict of $36,493 for medicals, lost wages, and pain and suffering, with fault assessed at 6 percent for the rear driver and 94 percent for the hospital.

C. Two separate cases went to trial against TARC in 2014 for bus passengers injured when the driver moved forward before each passenger could take her seat. Both ended with defense verdicts on liability. See **Snodgrass v. TARC**, Jefferson Circuit Court, 07-CI-5089 (January 15, 2014) and **Crabtree v. TARC**, Jefferson Circuit Court, 13-CI-3307 (September 16, 2014). In another case, a seated TARC passenger fell to the floor when her bus was rear-ended by a street sweeper. She was awarded $2,658 in medical expenses and $224 in lost wages by the jury. **Bates v. White**, Jefferson Circuit Court, 11-CI-5939 (January 31, 2014).

D. The sole tow truck case was **Scholl v. Godby**, Boone Circuit Court, 12-CI-0452 (Apr. 4, 2014). In that case, the tow truck's driver was injured when his foot was run over by a customer's car he was attempting to load; there was a dispute with the defendant over whether he instructed her to keep her foot on brake or to take it off the brake; the raw verdict was $93,750 but jury assessed 97 percent of the fault to the plaintiff and 3 percent to the defendant, leading to a judgment of $2,818.
V. FEDERAL CASES INVOLVING KENTUCKY LAW

A. Western District of Kentucky

1. Vicarious liability/gross negligence.

M.T. v. Saum, 3 F.Supp.3d 617 (W.D. Ky. Mar. 12, 2014), chartered bus overturned; under Kentucky law bus driver not grossly negligent, bus company not vicariously liable, and alleged gross negligence of driver could not be imputed to company which brokered and chartered the trip.

2. Constitutionality of KRS 367.409(1) on post-MVA solicitation.


3. Negligent hiring and training/admission of liability.

Meherg v. Pope, 1:10-CV-00185-M, 2014 WL 1417870 (W.D. Ky. Apr. 14, 2014). Denial of motion to refer question of law to Kentucky Supreme Court. Refers to then-pending MV Transp. Inc. v. Allgeier, 433 S.W.3d 324 (Ky. 2014) on pursuing claims for negligent hiring and training despite employer's admission of vicarious liability, court distinguishes and states not relevant since "the Plaintiffs do not need to prove any theory of liability in order to recover damages because [driver's] liability has been conceded. [...] All that remains in this case is the question of damages. There will be no apportionment of fault whatsoever. Crete has agreed to pay 100% of the Plaintiffs' damages."


Minter v. Liberty Mut. Fire Ins. Co., 3:11-CV-00249-S, 2014 WL 4914739 (W.D. Ky. Sep. 30, 2014), UIM carrier sued under UCSPA and KCPA granted summary judgment; court held as plaintiff could not show actual compensable damages, including emotional damages, from insurer's conduct, she is precluded from punitive damages.
B. Eastern District of Kentucky

1. UIM coverage/evidence of lost wages.

*McFerrin v. Allstate Property & Casualty Co.*, 29 F.Supp.3d 924 (E.D. Ky. 2014), in action against UIM insurer, insurer granted partial summary on lost wages where plaintiff returned to work with no limitations on his normal work duties, he presented no evidence that he has missed work since returning, or that his injury was permanent, and did not demonstrate how the amount he may have lost due to missing work date and accident and return could mathematically add up to the amount of lost wages he claimed.

2. Damages for denial of basic reparations benefits.


3. Summary judgment/railroad crossing.


4. Summary judgment/prior ownership of vehicle.

*Cobb v. Czekajlo*, 5:14-58-DCR, 2015 WL 65131 (E.D. Ky. Jan. 5, 2015), accident on Paris Pike, previous owner of tractor involved granted summary judgment; "notwithstanding the fact that the plaintiffs have failed to offer any evidence that Bodkin owned the tractor or trailer at the time of the accident, the allegation of ownership is insufficient to create a genuine issue of material fact precluding summary judgment."

5. Log truck/standard of care.


**Tackett v. Vargas**, 5:13-337-DCR, 2014 WL 3695469 (E.D. Ky., July 24, 2014), summary judgment in favor of Enterprise Rent-A-Car, which owned vehicle operated by alleged tortfeasor; absent exceptional circumstances mere ownership of an automobile is not enough to impose liability on the owner for the negligence of the operator; negligent entrustment claim not in Complaint but not established on facts anyway, as there is no authority Kentucky courts would impose liability for entrusting a vehicle to an unlicensed but otherwise competent driver.


8. KRS 411.190 recreational use statute.


9. Lessee as vehicle owner/basic reparations benefits/denial of coverage.

**Trent v. Bierlen**, 2012–236 (WOB–JGW), 2014 WL 108314 (E.D. Ky. Jan. 9, 2014), as lessee is owner of truck for purposes of insurance policy, under Kentucky law insured is entitled to basic reparations benefits coverage and reasonable attorney fees and 18 percent interest as denial of coverage was without foundation.

10. Summary judgment/evidence of negligence or defect

**Richardson v. Rose Transport, Inc.**, 5:11-317-KKC, 2014 WL 121690 (E.D. Ky. Jan. 13, 2014), grants motion for summary by trucking company and trailer maker defendants in MVA case because "plaintiffs have submitted no evidence that defendant's trailer was negligently maintained" and "have not demonstrated what exactly about the design of the Wabash underride guard was defective." Because of failure to demonstrate as a matter of law that they can prevail on theories of liability advanced, plaintiff's wrongful death claim also dismissed.