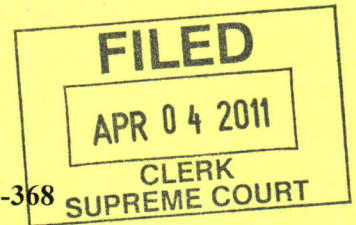


COMMONWEALTH OF KENTUCKY
SUPREME COURT OF APPEALS
NO. 2010-SC-00264
COMPANION CASES: 2010-SC-352 and 2010-SC-368



INTERLOCK INDUSTRIES, INC., and
OHIO VALLEY ALUMINUM COMPANY, LLC

APPELLANTS

vs.

CHARLES RAWLINGS
ANTHEM HEALTH PLANS OF KENTUCKY, INC.,
ROSENMAN'S, INC. and
KENTUCKY FLATBED COMPANY, LLC

APPELLEES

INTERLOCK INDUSTRIES, INC. AND OHIO VALLEY ALUMINUM COMPANY, INC.
REPLY BRIEF TO KENTUCKY FLATBED COMPANY, LLC

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Deborah L. Harrod".

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CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of this Brief on Behalf of Appellants was mailed this 31st day of March, 2011, to: 10 originals to the Clerk of the Supreme Court of Kentucky, 209 Capitol Building, 700 Capital Avenue, Frankfort, KY, 40601; 5 copies to Samuel P. Givens, Jr., Clerk Court of Appeals 360 Democrat Driver, Frankfort, KY, 40106; Shelby Circuit Clerk, 9 Courthouse, 501 Main Street, Shelbyville, KY, 40065; Honorable Tom McDonald, Shelby Circuit Judge, 9 Courthouse, 501 Main Street, Shelbyville, KY, 40065; Brien G. Freeman, Todd K. Childers, FREEMAN & CHILDERS, 201 South Main Street, PO Box 1546, Corbin, KY 40702-1546; Gene F. Price, Joshua T. Rose, J. Morgan McGarvey, 400 W. Market Street, 32nd Floor, Louisville, KY 40202; John G. McNeill, Landrum & Shouse LLP, PO Box 951, Lexington, KY, 40588-0951; Robert E. Stopher, Boehl Stopher & Graves, LLP, Aegon Center, Suite 2300, 400 West Market Street, Louisville, KY 40202.

A handwritten signature in cursive script, appearing to read "Wayne J. Carroll/Deborah L. Harrod".
WAYNE J. CARROLL/DEBORAH L. HARROD

ARGUMENT


Kentucky Flatbed argues that Interlock does not point out where, or argue how, the ruling of the Shelby Circuit Court was arbitrary, unreasonable or otherwise an abuse of the Circuit Court's discretion. The argument that Interlock makes is that while the Trial Court allowed discovery to continue past the discovery deadlines set in the Civil Pretrial Order, the Trial Court refused to allow Interlock's expert to testify. Not only are these two inconsistent rulings arbitrary, but because Interlock's expert needed the information garnered from that discovery in order to make a thorough analysis and issue an opinion, the Trial Court's refusal to let Interlock's expert to testify was unreasonable.

Part of that discovery was the deposition testimony of Gary Helton, the owner of Kentucky Flatbed. Although Interlock attempted many times to set the deposition of Gary Helton, it was not taken until May 1, 2009, and only after Interlock made a Motion to Compel. The deposition of Thomas Hull, the President of Rosenman's, was not taken until May 21, 2009. Further, discovery in the form of Interrogatories and Request for Production of Documents in this case did not cease until May of 2008. All of this discovery was pertinent and essential to Interlock's expert in forming his opinion. As soon as discovery was completed, Interlock's expert gave a written opinion, which was immediately disclosed to all Parties. This disclosure was made six weeks prior to the scheduled trial in this action. To exclude the testimony of

Interlock's expert witness under these circumstances would be arbitrary, unreasonable and unfair. See *Baptist Healthcare Systems, Inc. v. Miller*, 177 S.W.3d 676 (Ky. 2005).

Therefore, the Court of Appeal's Opinion and Order entered March 19, 2010, Affirming the Trial Court's Interlocutory Order entered June 24, 2008, sustaining the Motion of Appellant and Cross-Appellee Rawlings' Motion to Exclude Expert Witness Testimony should be **REVERSED** if this case is remanded back to the Trial Court for a new trial.

Respectfully submitted,



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