COMMONWEALTH OF KENTUCKY
KENTUCKY SUPREME COURT
CASE NO. 2010-SC-264-DG
~~CASE NO. 2010-SC-352-DG~~
~~CASE NO. 2010-SC-368-DG~~

INTERLOCK INDUSTRIES, INC. ET AL. — APPELLANTS

v.

Appeal from Shelby Circuit Court
Action No. 06-CI-119

On Discretionary Review from Kentucky Court of Appeals
Case No. 2008-CA-1616-MR
Case No. 2008-CA-1617-MR
Case No. 2008-CA-1686-MR

CHARLES RAWLINGS, ET AL. — APPELLEES

BRIEF ON BEHALF OF *AMICUS CURIAE*, KENTUCKY JUSTICE ASSOCIATION

Submitted by:

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(CERTIFICATE OF SERVICE INSIDE)

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of February, 2011, ten (10) originals of this brief were served via Federal Express upon Susan Stokely Clary, Clerk of the Supreme Court, Room 209, 700 Capital Ave., Frankfort, KY 40601, with one (1) copy of same served by regular mail upon: Sam Givens, Clerk of the Kentucky Court of Appeals, 360 Democrat Drive, Frankfort, KY 40601; Hon. Tom McDonald, Special Judge, Shelby Circuit Court, 9 Courthouse, 501 Main Street, Shelbyville, KY 40065; Gene F. Price, 400 W. Market Street, 32nd Floor, Louisville, KY 40202; Wayne Carroll, Deborah Harrod, 7508 New LaGrange Road, Louisville, KY 40222; John McNeill, P.O. Box 951, Lexington, KY 40588; Robert E. Stopher, 400 W. Market St., Louisville, KY 40202; Todd Childers, Brien Freeman, 201 S. Main Street, P.O. Box 1546, Corbin, KY 40702.

KEVIN C. BURKE

STATEMENT OF POINTS AND AUTHORITIES

INTRODUCTION

The two-year limitations period in the Motor Vehicle Reparations Act (MVRA) applies to tort liability claims arising out of the "operation" of a motor vehicle. "Operation" of a motor vehicle includes loading and unloading activities.

PURPOSE AND INTEREST OF *AMICUS CURIAE*

This is a case about statutory construction. The two-year MVRA limitations period broadly applies to all tort liability claims "not abolished" by KRS 304.39-060. See KRS 304.39-230(6). Tort liability claims not abolished by the Act are those *"arising out of the ownership, maintenance, operation or use"* of a motor vehicle. See KRS 304.39-060(2)(b)(Emphasis added). Surprisingly, the phrase has not been fully interpreted. No Kentucky Court has interpreted "operation" of a motor vehicle in the context of the statute. However, the plain meaning of "operation" includes the loading or unloading for at least three reasons:

First, the words "operation" and "loading or unloading" are used interchangeably in the MVRA's tort liability sections.

Second, pre-MVRA case law holds that "operation" of a motor vehicle includes loading or unloading under facts nearly identical to the present case.

Third, the financial responsibility laws of other states reference "operation" of a motor vehicle. Those states interpret "operation" to include loading or unloading processes under facts nearly identical to the present case.

The Kentucky Justice Association submits that the language of the MVRA and rules of statutory construction govern this case, not the fact-specific and legally distinguishable case law cited by Appellants. *Amicus Curiae* requests clarification of this

important area of the law so that Mr. Rawlings and other accident victims receive the full benefit of the MVRA tort limitations period.

STATEMENT OF THE CASE

Charles Rawlings is a self-employed truck driver. On January 27, 2005, Rawlings delivered scrap aluminum on a flatbed trailer to Ohio Valley Aluminum Co. (OVA). He parked his truck and alerted an OVA forklift operator that some bundles shifted during transport. As was his practice, Rawlings unfastened the straps securing the aluminum. It was OVA's responsibility to unload them. While the OVA forklift operator started unloading, Rawlings rolled up the flatbed straps to ready his vehicle for the road. He then heard the OVA forklift engine "rev," and within seconds heard the sound of crunching aluminum. The aluminum bundles fell and pinned Rawlings, first to the flatbed trailer, and then to the ground.

Rawlings suffered severe injuries. He had to have surgery and was off work for about five months. Since he was self-employed, Rawlings had no wage income during this time. However, he was paid $10,000 in "no-fault" (BRB) benefits which covered a portion of his lost wages and medical expense.

On March 8, 2006, Rawlings filed suit against OVA and its parent company, Interlock Industries. Interlock/OVA filed a third-party complaint against Kentucky Flatbed Company, LLC, the owner of the flatbed, and Rosenman's, Inc., the company which initially secured the flatbed before transport to OVA.

Soon before trial, defendants argued that Rawlings' claims were barred by the general one-year limitations period in KRS 413.140(1)(a). Rawlings argued that the two-year MVRA limitations in KRS 304.39-230(6) applied because his injuries arose out of

his "ownership, maintenance, operation or use" of a motor vehicle, and because he received BRB payments. The circuit court entered summary judgment and dismissed the case anyway.

The Court of Appeals reversed, holding that the MVRA limitations period applied. The panel found that Rawlings' conduct was of a "dual character" because he was making "use" of a motor vehicle during the unloading process. The panel cited inconsistent and fact-intensive case law - cases largely decided in the context of the BRB provisions of the MVRA - but found that Rawlings' torts claims arose from the "use" of a motor vehicle anyway. This Court granted discretionary review.

ARGUMENT

I. TORT LIABILITY CLAIMS WHICH ARISE OUT OF THE "OPERATION" OF A MOTOR VEHICLE ARE SUBJECT TO THE MVRA'S TWO-YEAR LIMITATIONS PERIOD

While the Court of Appeals reached the right result, it did so within a too-narrow analytical framework. Rawlings did not need to make "use" of a motor vehicle to benefit from two-year MVRA tort limitations period. Rawlings' tort liability claims need only arise out of "the ownership, maintenance, operation or use" of a motor vehicle. Whether or not "ownership," "maintenance," or "use" also apply, Rawlings' claims clearly arise out of the "operation" of a motor vehicle.

A. Overview and Structure of the Motor Vehicle Reparations Act

Enacted in 1974, the MVRA is not simply a "no-fault" Act. The MVRA "is comprehensive legislation covering much more than just no-fault insurance." *Crenshaw v. Weinberg*, 805 S.W.2d 129, 131 (Ky. 1991), citing *Fann v. McGuffey*, 534 S.W.2d 770 (Ky. 1975). In addition to structuring no-fault ("BRB" in the parlance of the MVRA), the

Act provides for compulsory automobile liability insurance, limits for liability insurance, mandatory offer of underinsured motorist protection, and a variety of motor vehicle insurance regulatory practices, some related to BRB and some not. *Id.*

Importantly, BRB and tort liability claims do not receive equal treatment under the MVRA. This Court has described tort liability and BRB as "apples and oranges," *see Coleman v. Bee Line Courier Service, Inc.*, 284 S.W.3d 123, 126 (Ky. 2009), and recognized that the tort liability sections of the MVRA are *broader than* the BRB provisions. *Troxell v. Trammell*, 730 S.W.2d 525, 527 (Ky. 1987).

One area where tort victims' rights were broadened was the time for filing suit under the Act. As stated in *Crenshaw*:

> The primary purpose of the MVRA is to benefit motor vehicle accident victims by reforming, and in some areas broadening, their ability to make and collect claims. One of these areas is by extending the statute of limitations in *all* actions for tort liability involving a motor vehicle accident victim "not abolished by KRS 304.39-060." KRS 304.39-230(6).

Crenshaw, 805 S.W.2d at 131 (Emphasis in original). The extended limitations period is consistent with the stated purpose of the MVRA to "reduce the need to resort to...litigation." KRS 304.39-010(5). If there is any doubt whether the general one year limitations period or the two-year MVRA limitations applies for tort liability claims, the longer period always applies. *Troxell, supra.* Moreover, the MVRA, including the tort limitations period, must be liberally construed in favor of accident victims given the overall framework and remedial nature of the MVRA. *See Beacon Ins. Co. of America v. State Farm Mut. Ins. Co.*, 795 S.W.2d 62, 63 (Ky. 1990); *Lawson v. Helton Sanitation, Inc.*, 34 S.W.3d 52, 62 (Ky. 2000).

B. The MVRA Covers Tort Claims Arising Out of the "Operation" (Loading or Unloading) of a Motor Vehicle, Regardless of the Location of the Injury

KRS 304.39-230(6) provides:

> An action for tort liability not abolished by KRS 304.39-060 may be commenced not later than two (2) years after the injury, or the death, or the last basic or added reparation payment made by any reparation obligor, whichever later occurs.

KRS 304.39-060(2)(b) allows recovery for damage claims *"arising out of the ownership, maintenance, operation or use"* of a motor vehicle so long as those damages are not abolished by the Act. First, Appellants do not contend that Rawlings' claims are abolished by the Act or fail to meet the statutory thresholds, so that is not an issue. Second, the word "or" in KRS 304.39-060(2)(b) means that each word (i.e. ownership, maintenance, operation, use) has a different meaning. *Hall v. Hospitality Resources, Inc.*, 276 S.W.3d 775, 784 (Ky. 2008)("terms joined by the disjunctive 'or' must have different meanings because otherwise the statute or provision would be redundant."). The use of the disjunctive also means that Rawlings' claims need only "arise out of" any one of the enumerated activities - not all of them. As far as relevant statutory definitions , only the words and phrases "use of a motor vehicle" and "motor vehicle" in KRS 304.39-060(2)(b) are defined by the MVRA. See KRS 304.39-020(6) and (7). The MVRA defines "owner" and "maintaining a motor vehicle," See KRS 304.39-020(12) and (16), however, those are not the exact words and phrases in KRS 304.39-060(2)(b).

1. "Arising out of"

"Arising out of" is not defined in the MVRA. Undefined words and phrases are not to be ignored. They must be construed according to the common and approved usage.

See KRS 446.080(4). The words "arising out of" are broad, general and comprehensive terms meaning "originating from," or "having its origin in," "growing out of" or "flowing from." *Insurance Co. of North America v. Royal Indem. Co.*, 429 F.2d 1014, 1017-1018 (6th Cir. (Ky.) 1970); *Hugenberg v. West American Ins. Company/Ohio Cas. Group*, 249 S.W.3d 174, 186 (Ky. 2006). Importantly, "arising out of" does not mean that the plaintiff or defendant must actually engage in the activities listed in KRS 304.39-060(2)(b). If the legislature had so intended, KRS 304.39-060(2)(b) would have specified that the parties must be an owner, maintainer, operator, or user of a motor vehicle at the time of injury. But that is not the case. Instead, by the use of "arising out of," the statute only requires some "causal connection" between damages and any one of the enumerated activities (i.e., ownership, maintenance, operation, or use).

2. "Operation" as Loading or Unloading

The word "operation" is also not defined by the MVRA. It, too, must be given its common and approved usage. KRS 446.080(4). Pre-MVRA case law defined "operation" of a motor vehicle to include loading and unloading activities without limitation. *Stout v. Sutton*, 434 S.W.2d 316, 318 (Ky. 1968). In *Stout*, the defendant drove a truck loaded with logs to a privately owned sawmill in Kentucky. When defendant arrived, he removed the chain securing the logs. One of the logs became dislodged, fell off the truck, and injured plaintiff. In construing the non-resident motorist statute, this Court's predecessor considered whether the unloading process constituted "operation of such motor vehicle." The Court noted that, although "operation" was not defined in the statute, the plain meaning of the word included the loading or unloading activities.

Even though *Stout* was decided seven years before the legislature enacted the

MVRA, it is important for several reasons. First, *Stout* recognized that the plain meaning of the phrase "operation of such motor vehicle" includes loading or unloading activities without limitation. Second, the legislature is presumed to be aware of case law when it enacts legislation. *Cook v. Ward,* 381 S.W.2d 168 (Ky. 1964)(presumption is that the Legislature is cognizant of the Constitution, previously enacted statutes, and the common law). The legislature chose not to define or limit the word "operation" when it enacted the MVRA. Therefore, it is presumed the legislature intended the same meaning of "operation" as in *Stout.*

A reading of the MVRA's tort liability sections as a whole also supports this conclusion. *Richardson v. Louisville/Jefferson County Metro Govt*, 260 S.W.3d 777, 779 (Ky. 2008)(Statutes "must be read as a whole and in context with other parts of the law."); *Petitioner F. v. Brown*, 306 S.W.3d 80, 86 (Ky. 2010)("[A]n act is to be read as a whole, and any language in the act is to be read in light of the whole act."). The tort liability and minimum security provisions of the MVRA mention the word "operation" and "loading or unloading" interchangeably. For instance, KRS 304.39-060(2)(b) includes claims "arising out of the ownership, maintenance, operation or use" of a motor vehicle, while KRS 304.39-110(1) requires that minimum security covering vehicles include accidents "arising out of ownership, maintenance, use, loading, or unloading" of a motor vehicle. Had the legislature intended to limit loading and unloading to the circumstances in KRS 304.39-020(6), there was no need to include the word "operation" in KRS 304.39-060(2)(b) or the words "loading or unloading" in KRS 304.39-110(1). To limit loading and unloading to the circumstances in KRS 304.39-020(6) would render these other words meaningless. "[W]e are not free to ignore portions of statutes that are

inconvenient to a particular litigant's position." *University of the Cumberlands v. Pennybacker*, 308 S.W.3d 668, 683 (Ky. 2010).

Finally, interpreting "operation" to include loading and unloading activities is consistent with other states' treatment. The case of *Mullenberg v. Kilgust Mechanical, Inc.*, 612 N.W.2d 327 (Wisc. 2000) is remarkably similar. There, plaintiff drove a truck to defendant's plant to deliver industrial-sized pipe. Plaintiff parked, got out of his truck, and allowed the trailer of the truck to be unloaded by defendant's employees. While an employee unloaded the trailer, some pipes rolled off, and hit plaintiff. Wisconsin's financial responsibility law requires liability coverage for injuries which arise from negligent "operation" of a motor vehicle. The word "operation" is undefined in the Act. Defendants claimed "operation" did not include loading and unloading activities and, therefore, did not include the factual circumstances of the case. The Wisconsin Supreme Court disagreed:

> The word 'operation' is not to be restricted to only a moving vehicle". In *Lukaszewicz* [*v. Concrete Research, Inc.*, 168 N.W.2d 581 (1969)] we noted that if the legislature intended the statute to cover only riding or driving on the highway, it would not have used the broader word "operation." *Lukaszewicz,* 43 Wis.2d at 341-42, 168 N.W.2d 581. The reasoning in these cases is applicable to Wis. Stat. § 194.41. A motor carrier by definition undertakes to transport passengers and property. Wis. Stat. § 194.01(1). Inherent in this task is that the carrier will be loaded and unloaded. Loading and unloading involves repeated, frequent contact with the motor carrier. Within this framework and considering the subject matter of Wis. Stat. ch. 194, as well as the legislature directive to construe ch. 194 liberally to protect the shipping public as well as the traveling public, we conclude that "negligent operation" encompasses loading and unloading.

See also Gulf Underwriters Ins. Co. v. Great West Casualty Co., 278 Fed.Appx. 454, 2008 WL 2150022 (5th Cir (Tex.) 2008)(injuries from "operation" of motor vehicle

include injuries which result when forklift operator unloads pipe from truck, pipes fall from forklift, and pipes crush plaintiff while plaintiff is outside of truck); *Argentina v. Emery World Wide Delivery Corp.*, 188 F.3d 86 (2d Cir. (NY) 1999) (injury arising out of "operation" of motor vehicle includes injuries when a steel plate fell off back of truck and injured plaintiff); *Melchert v. Melchert*, 519 N.W.2d 223 (Minn. Ct. App. 1994)(injury arising from "operation" of motor vehicle includes injuries while standing outside of a truck and loading hay onto attached trailer).

Given the previous, "operation" of a motor vehicle in KRS 304.39-060(2)(b) includes loading and unloading activities. Since Rawlings' claims arise from unloading activities, his claims are within the purview of the MVRA.

3. "Motor Vehicle"

The final question is whether Mr. Rawlings' parked truck is "motor vehicle" under the MVRA. It clearly is. KRS 304.39-020(7) defines motor vehicle as follows:

> "Motor vehicle" means any vehicle which transports persons or property upon the public highways of the Commonwealth, propelled by other than muscular power except road rollers, road graders, farm tractors, vehicles on which power shovels are mounted, such other construction equipment customarily used only on the site of construction and which is not practical for the transportation of persons or property upon the highways, such vehicles as travel exclusively upon rails, and such vehicles as are propelled by electrical power obtained from overhead wires while being operated within any municipality or where said vehicles do not travel more than five (5) miles beyond the said limits of any municipality. Motor vehicle shall not mean moped as defined in this section.

Rawlings' parked truck satisfies this definition. Appellants do not argue otherwise. Indeed, unlike other no-fault acts, the MVRA does not contain a "parked vehicle exception" to coverage. *Cf.* MCL §500.3105; MCL §500.3106 (Michigan No-Fault Act).

C. Cases Interpreting the BRB Sections of the MVRA Do Not Apply

The cases Appellants rely on share a common thread: they are either BRB cases or rely significantly on BRB cases for support. More specifically, they can be traced to three cases: *Commercial Union Assurance Companies v. Howard*, 637 S.W.2d 647 (Ky. 1982), *State Farm Mut. Auto. Ins. Co. v. Rains*, 715 S.W.2d 232 (Ky. 1986), and *State Farm Mut. Auto. Ins. Co. v. Hudson*, 775 S.W.2d 922 (Ky. 1989). All involve BRB claims. None involve tort liability claims.

In *Howard*, the plaintiff suffered injures while repairing his truck. He filed for BRB. His insurer denied the claim. This Court examined the BRB provisions in KRS 304.39-030 and KRS 304.39-040. Unlike the tort liability sections of the MVRA, the BRB sections allow recovery for injuries arising from the "*maintenance or use*" of a motor vehicle. *Howard* noted that, because "maintaining a motor vehicle" (as opposed to "maintenance") is mentioned within the definition of "use of a motor vehicle", then "maintenance or use" would mean the same thing: "use of a motor vehicle." Because Howard's repair work did not fall within "use of a motor vehicle," as defined by KRS 304.39-020(6), he was not entitled to BRB. Four years later, *Rains* was decided. *Rains* involved consolidated BRB cases. The Court performed the same analysis as in *Howard* and held that plaintiffs' injuries, one arising from a gunshot and another from a fight, did not arise from the "use of a motor vehicle." Again, plaintiffs were denied BRB. Following *Howard* and *Rains*, the result in *Hudson* was inevitable. In *Hudson*, the plaintiff was injured when a log fell off a truck. The Court held that Hudson was not "occupying, entering into, or alighting from a vehicle" as required by the definition of

"use of a motor vehicle" in KRS 304.39-020(6). Because the injury did not arise from the "use of a motor vehicle," Hudson was denied BRB.

The reasoning in the previous cases may not be entirely accurate even in the context of the BRB provisions of the MVRA:

First, *Howard* violates several rules of statutory construction. The opinion at once re-characterizes the word "maintenance" and then gives it no meaning. It also describes "maintenance or use" as an "ambiguous" phrase, but fails to resolve the ambiguity in favor of the accident victim. *Howard*, 637 S.W.2d at 649.

Second, the *Howard* line of cases do not account for other BRB sections in the MVRA. For instance, KRS 304.39-050 deals with priority of BRB payment to pedestrians hit by a motor vehicle. The statute defines pedestrian in the negative as "any person who is not making *'use of a motor vehicle'* at the time his injury occurs." KRS 304.39-050(1)(Emphasis added). Because pedestrians are entitled to receive BRB under the Act, BRB recovery is clearly not limited to injuries while "occupying, entering into, or alighting from a vehicle" as *Howard*, *Rains*, and *Hudson* suggest.

Third, the *Howard* line of cases fail to recognize the apparent ambiguity between the language of KRS 304.39-030/040, the definition of BRB in KRS 304.39-020(2), and the policy and purpose of the MVRA in KRS 304.39-010(1). BRB is defined to include "injury arising out of the *operation*, maintenance, or use of a motor vehicle." KRS 304.39-020(2)(Emphasis added). Likewise, a stated purpose of the MVRA is to ensure the purchase of insurance "covering basic reparation benefits and legal liability arising out of ownership, *operation* or use" of a motor vehicle." KRS 304.39-010(1)(Emphasis

added). But, ultimately, this Court need not reconcile *Howard*, *Rains,* and *Hudson* with the statutory BRB language because Mr. Rawlings received BRB payments.

The bigger problem is that *Howard*'s reasoning has seeped into cases interpreting the tort liability limitations provision of the MVRA, as explained below.

D. Tort Liability Cases Relying on BRB "Use of a Motor Vehicle" Decisions Provide Little Guidance

Three years after *Howard,* the Court of Appeals decided *Clark v. Young*, 692 S.W.2d 285 (Ky. App. 1985). Young was standing on a flatbed trailer when he was injured. The Court of Appeals, relying on *Howard*, noted that Young was not making "use of a motor vehicle" at the time of injury and, therefore, the two-year MVRA tort limitations period did not apply. The language is *dicta* because Young's claims related-back under CR 15.03 so they survived dismissal.

The same year, this Court decided *Goodin v. Overnight Transp. Co.*, 701 S.W.2d 131 (Ky. 1985). *Goodin* involved a narrow certified question from federal court: whether Goodin's injuries arose from the "use of a motor vehicle" as defined by KRS 304.39-020(6) for the purpose the two-year limitations period. The certified question did not ask the broader question: whether Goodin's injuries arose out of the *"ownership, maintenance, operation or use"* of a motor vehicle in KRS 304.39-060(2)(b)(Emphasis added). In that case, Goodin was standing on a trailer when he suffered injury. This Court, distinguishing *Howard*, and noting the *dicta* in *Clark*, answered only the certified question but resolved the question in favor of Goodin.

No published Kentucky case, either before or after *Goodin*, has refused to apply the MVRA tort limitations to the plaintiff's detriment due to the "use of a motor vehicle"

definition. Unfortunately, the same cannot be said for unpublished federal cases which rely on the *Howard* line of cases. *See Brotherton v. Map Enterprises, Inc.*, 1996 U.S. App. LEXIS 33272 (6th Cir. (Ky.) 1996)(unpublished); *Childress v. Interstate Battery Systems of America*, 2010 U.S. Dist. LEXIS 13897 (W.D. Ky. Feb. 18, 2010)(unpublished). Also, the Kentucky Court of Appeals last year considered Mr. Rawlings case and *Cochran v. Premier Concrete Pumping*, Inc., 2010 WL 1728920 (Ky.App. Apr. 30, 2010)(disc rev. pending). Both cases involve injuries to accident victims while stationed outside motor vehicles and during the unloading process. Both opinions relied on the *Howard* line of cases. The panels reached different results: *Cochran* applied the general one-year limitations period; *Rawlings* applied the two-year MVRA limitations period.

If this case and *Cochran* demonstrate anything, it is that this area of the law is desperately in need of clarification. *Howard* and other BRB cases simply do not apply to tort liability cases. Howard and other BRB cases are "apples" to tort liability claims' "oranges." *Coleman v. Bee Line Courier Service*, 284 S.W.3d at 126. The tort liability sections of the MVRA are also *broader than* the BRB sections. *Troxell v. Trammell*, 730 S.W.2d at 527. A plain reading of the BRB sections referenced in *Howard* (arising out of "maintenance or use") and the tort liability section in KRS 304.39-060(2)(b)(arising out of "ownership, maintenance, operation, or use") makes this clear.

II. VOLUNTARY PAYMENT OF BASIC REPARATIONS BENEFITS INDEPENDENTLY TRIGGERS THE TWO-YEAR LIMITATIONS PERIOD

The Appellants do not dispute that Mr. Rawlings received $10,000 in BRB payments. Appellants also do not dispute that BRB payment independently triggers the

two-year limitations period in KRS 304.39-230(6). Nevertheless, they seek to enforce the general one-year limitations period anyway.

Appellants appear to argue that Rawlings and others like him must "second guess" the BRB carrier and determine, pre-suit, if BRB payment is really justified. This simply overlooks the stated purpose of the MVRA to: "reduce the need to resort to…litigation" and to "pay victims of motor vehicle accidents without the delay, expense, aggravation, inconvenience, inequities and uncertainties of the liability system." KRS 304.39-010(5). If the rule is as Appellants suggest, no reasonable BRB recipient would try to resolve their tort claims within the extended time allotted by the MVRA – claimants would always file suit before the expiration of the one-year limitations period.

The MVRA forms a complex and comprehensive triangular relationship between the accident victim, BRB obligor, and liability carrier/tortfeasor. If the BRB obligor pays benefits, the accident victim understands the two-year limitations period applies. The MVRA creates this reliance. This Court has previously held that the actions and representations of a liability carrier, whether negligent or intentional, may toll the limitations period to file suit against the tortfeasor. See *Miller v. Thacker*, 481 S.W.2d 19 (Ky. 1972). Given the MVRA's triangular relationship, and in light of the stated purpose in KRS 304.39-010(5), BRB payment must be construed as an affirmative representation that the two-year tort limitations period applies which, in turn, binds the tortfeasor/liability carrier. Otherwise, a cardinal rule of statutory construction is violated: the stated intent of the MVRA cannot be met. "Discerning and effectuating legislative intent is the first and cardinal rule of statutory construction." *Saxton v. Com.*, 315 S.W.3d 293 (Ky. 2010).

CONCLUSION

This case turns not on the inapposite case law, but on statutory construction of the MVRA. The language of the MVRA must not be interpreted to fit within factually-distinguishable case law. Quite the opposite: this Court should clarify or, where appropriate, abrogate prior case law to fit the language of the MVRA. If the language of the MVRA and rules of statutory construction are followed, Mr. Rawlings and others like him are entitled to the benefit of the two-year tort limitations period.

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