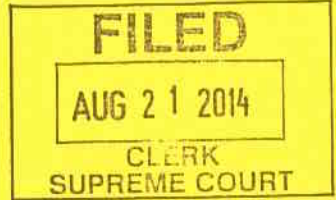


COMMONWEALTH OF KENTUCKY  
SUPREME COURT OF KENTUCKY  
FILE NO. 2013-SC-000489-D



BONITA BEAUMONT

APPELLANT

V. ON APPEAL FROM KENTUCKY COURT OF APPEALS  
FILE NO. 2012-CA-000660  
AND FROM JEFFERSON CIRCUIT COURT  
2011-CI-006183

MULUKEN ZERU

APPELLEE

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**REPLY BRIEF FOR APPELLANT**

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**CERTIFICATE OF SERVICE**

It is hereby certified that the attached Brief was mailed to Susan Stokley Clary, Clerk of the Supreme Court, 700 Capital Avenue, Room 209, Frankfort, Kentucky 40601; Samuel P. Givens, Jr., Clerk of Court of Appeals, 360 Democrat Drive, Frankfort, Kentucky 40601; Hon. W. Douglas Kemper, Gwin Steinmetz Miller & Baird, PLLC, 401 West Main Street, Suite 1000, Louisville, Kentucky 40202; Hon. Barry Willett, Judge, Jefferson Circuit Court, Division One, Jefferson County Judicial Center, 700 West Jefferson Street, Louisville, Kentucky 40202 on this 20<sup>th</sup> day of August, 2014.

AIRHART & ASSOCIATES

A handwritten signature in cursive script, appearing to read "Edward C. Airhart", written over a horizontal line.

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## REPLY ARGUMENT

Appellee believes strongly in extra-special checks, he calls them ‘replacement checks,’ which are “meant only to replace a check that a provider or other payee has reported as lost but which originally was issued prior to the PIP coverage being exhausted.”<sup>1</sup> Kentucky’s MVRA contains no provisions about so-called replacement checks, and neither does Kentucky’s UCC.

The statute of limitations for victims of automobile crashes in the MVRA reads:

“[a]n 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 § 304.39-230(6).

The statute mentions no ‘replacement checks,’ only payment. Appellee asserts that the MVRA is a self-contained act, and as such, “UCC and payment law principles are entirely irrelevant and have no application here.”<sup>2</sup> Yes, the Court must read each part of the basic reparations law in light of its other parts and the overall objective, and so the MVRA is certainly self-contained in this respect. Nonetheless, Kentucky’s other laws do continue to apply, particularly those which address the specific subject of checks, their payment, and their timing of payment.<sup>3</sup> Even if the Court could so easily set aside the laws written by Kentucky’s Legislature, this cannot permit Kentucky’s courts to invent a new ‘replacement check’ principle out of thin air.<sup>4</sup>

Appellee relies exclusively on unpublished cases for his anomalous replacement check construction, because *Wilder* certainly says nothing about replacement checks. Furthermore, no part of *Wilder* insists that a check is paid because it is issued. Rather, *Wilder* simply opines that

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<sup>1</sup> Appellee’s Brief, p. 5

<sup>2</sup> Appellee’s Brief, p. 12.

<sup>3</sup> See Appellee’s Brief, p. 9 (“Where one statute deals with a subject matter in a general way and another in a specific way, the more specific provision prevails. *Travelers Indem. Co. v. Reker*, 100 S.W.3d 75, 73 (Ky. 2003); *DeStock #14, Inc. v. Logsdon*, 993 S.W.2d 952, 959 (Ky. 1999).”) and (“Pursuant to statutory construction principles, a special statute preempts a general statute.”)

<sup>4</sup> See *Troxell*, 730 S.W.2d at 527-528. (Kentucky’s courts cannot add restrictive language to KRS § 304.39-230(6)).

Appellee chafes at its traditional burden, and complains that an insured “would [not] have any idea of when checks were sent by the PIP insurer to specific payees or what those payees did with the checks once they received them.”<sup>12</sup> A complaint of such an inconvenience would be better directed to the Kentucky Legislature than to the Supreme Court of Kentucky. After all, this is a statutory construction case interpreting the word ‘payment,’ and Kentucky’s courts are bound to regard the plain meaning of the Legislature’s words and allow statutes to promote their objects.<sup>13</sup> The object of the statute of limitations in KRS § 304.39-230(6) was to extend an accident victim’s action from one year to within two years of the last PIP payment.<sup>14</sup> Appellee’s brief has lost sight of payment and the object of KRS § 304.39-230(6), and has instead favored new terms such as replacement checks (not made for additional services), assumed corporate names, issue dates, PIP ledgers, accommodations, and even reasonable reliance. In favor of its convoluted construction, decidedly not “the only workable approach,” Appellee states “the important part of each individual transaction for the purposes of the MVRA is the date on which the insurance company sent it to the payee – a date certain that can be easily ascertained in all instances from the PIP payment log.”<sup>15</sup> KRS § 304.39-230(6) lacks the words ‘transaction,’ ‘date certain,’ ‘easily ascertained,’ ‘PIP log/ledger,’ or even ‘sent’ or ‘issue.’ If the Legislature desired to adopt Appellee’s approach, we might expect to see at least one of these words in KRS § 304.39-230(6). It is decidedly beyond the scope of any Kentucky court to correct the Legislature.<sup>16</sup>

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<sup>12</sup> Appellee’s Brief, p. 27.

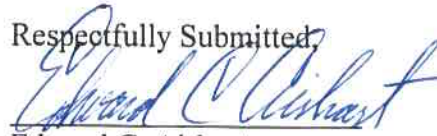
<sup>13</sup> *Love*, 334 S.W.3d at 93 citing KRS § 446.080(4); KRS § 446.080(1)

<sup>14</sup> *Crenshaw*, 805 S.W.2d at 131.

<sup>15</sup> Appellee’s Brief, p. 30.

<sup>16</sup> *Revenue Cabinet v. H.E. O’Daniel*, 153 S.W.3d 815, 819 (Ky. 2005) (“the plain meaning of the statutory language is presumed to be what the legislature intended, and if the meaning is plain, then the court cannot base its interpretation on any other source.”)

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Edward C. Airhart". The signature is written in a cursive style and is positioned above the printed name.

Edward C. Airhart

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