SUPREME COURT OF KENTUCKY

# Harold Merritt, Individually, and as Court-Appointed Administrator of the Estate of Kimberly Merritt, and as Court-Appointed Administrator and Next Friend of the Estate of Harold Merritt, III v. Catholic Health Initiatives, Inc., and First Initiatives Insurance, Ltd.

Merritt · No. 2018-SC-0155-DG · Decided December 11, 2020

## SUMMARY

The Supreme Court of Kentucky affirmed the lower courts' rulings in favor of Catholic Health Initiatives, Inc. and First Initiatives Insurance, Ltd. The Court held that First Initiatives is a foreign captive insurer and is exempt from the Kentucky Unfair Claims Settlement Practices Act under KRS 304.49-150. The Court also held that First Initiatives was not transacting the business of insurance in Kentucky and that the trial court did not abuse its discretion by denying additional discovery.

## CASE DETAILS

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| COURT | Supreme Court of Kentucky |
| WRITING FOR THE COURT | Justice Hughes |
| JURISDICTION | Kentucky |
| DECIDED | December 11, 2020 |
| DOCKET | 2018-SC-0155-DG |
| DISPOSITION | affirmed |
| PROCEDURAL POSTURE | On discretionary review, the Kentucky Supreme Court reviewed the Court of Appeals' affirmance of the trial court's denial of declaratory relief and grant of summary judgment to Catholic Health Initiatives, Inc. and First Initiatives Insurance, Ltd. |
| STANDARD OF REVIEW | Statutory interpretation and summary judgment are reviewed de novo. Discovery rulings are reviewed for abuse of discretion. |
| PRECEDENTIAL VALUE | Published; to be published |
| PARTIES | Harold Merritt, individually and as court-appointed administrator of the Estate of Kimberly Merritt and as court-appointed administrator and next friend of the Estate of Harold Merritt, III v. Catholic Health Initiatives, Inc., First Initiatives Insurance, Ltd. |

## TOPICS

insurance bad faith | declaratory relief insurance | statutory interpretation | plain meaning rule | insurance

## PRACTICE AREAS

insurance law | insurance bad faith | statutory interpretation | declaratory judgment | civil procedure

## QUESTIONS PRESENTED

1. Whether First Initiatives, as a foreign captive insurer providing captive self-insurance to its parent and affiliates, is subject to the Kentucky Unfair Claims Settlement Practices Act.
2. Whether First Initiatives was transacting the business of insurance in Kentucky within the meaning of KRS 304.49-230, thereby avoiding the captive-insurer exemption in KRS 304.49-150(1).
3. Whether the trial court abused its discretion by denying Merritt additional discovery after denying his motion for declaratory judgment.

## HOLDINGS

1. First Initiatives is both a pure captive insurer and a foreign captive insurer under KRS 304.49-010 because it insures the risks of its parent and affiliated companies and was formed under the laws of a jurisdiction outside the United States.
2. The Kentucky Unfair Claims Settlement Practices Act does not apply to captive insurers because KRS 304.49-150(1) expressly exempts captive insurance companies from provisions of the Kentucky Insurance Code outside Subtitle 49.
3. First Initiatives was not transacting the business of insurance in Kentucky, so KRS 304.49-230 did not remove its exemption from the rest of the Kentucky Insurance Code.
4. The trial court did not abuse its discretion by denying Merritt's post-ruling request for additional discovery.

## KEY QUOTATIONS

> *"No provisions of this chapter, other than those contained in KRS 304.49-010 to 304.49-230 or contained in specific references contained in KRS 304.49-010 to 304.49-230, shall apply to captive insurance companies."* (10-11)

> *"A self-insurer and an insurer are not the same"* (14)

> *"A self-insurance arrangement such as the one involved here is not a contract of insurance."* (15)

## FACTUAL BACKGROUND

First Initiatives Insurance, Ltd. is a wholly owned subsidiary of Catholic Health Initiatives organized in the Cayman Islands to provide self-insurance for Catholic Health, its affiliates, and their employees. Catholic Health alone paid assessments, and the arrangement covered the affiliated entities under a single self-insurance agreement; neither KentuckyOne Health nor Dr. Smith purchased insurance policies or paid premiums to First

Initiatives. After Merritt's medical-negligence claims were settled, he alleged that First Initiatives engaged in bad-faith settlement conduct and sought a declaration that the Kentucky Unfair Claims Settlement Practices Act applied to the captive insurer.

### PROCEDURAL HISTORY

Merritt brought medical negligence, fraud, consumer-protection, and Kentucky Unfair Claims Settlement Practices Act claims after the deaths of his wife and newborn son. The trial court bifurcated the bad-faith claims, denied Merritt's motion for declaratory judgment concerning the UCSPA, granted summary judgment to Catholic Health and First Initiatives, and dismissed the claims against them. The Court of Appeals affirmed, and the Kentucky Supreme Court granted discretionary review. The Supreme Court affirmed.

### DISPOSITION

affirmed

### CASES CITED

- St. Joseph Hosp. v. Frye, 415 S.W.3d 631, 632 (Ky. 2013)
- Shelton v. Kentucky Easter Seals Soc'y, Inc., 413 S.W.3d 901, 905 (Ky. 2013)
- Davidson v. American Freightways, Inc., 25 S.W.3d 94, 100, 102 (Ky. 2000)
- State Farm Mutual Automobile Insurance Co. v. Reeder, 763 S.W.2d 116, 118 (Ky. 1988)
- Department of Revenue, Finance and Administrative Cabinet v. Wyrick, 323 S.W.3d 710, 713 (Ky. 2010)
- Beckham v. Board of Education, 873 S.W.2d 575, 577 (Ky. 1994)
- University of Louisville v. Rothstein, 532 S.W.3d 644, 648, 651 (Ky. 2017)
- Buck Run Baptist Church, Inc. v. Cumberland Surety Insurance Co., 983 S.W.2d 501, 504-05 (Ky. 1998)
- Humana, Inc. v. Commissioner, 881 F.2d 247, 251 (6th Cir. 1989)
- Commonwealth v. Reinhold, 325 S.W.3d 272 (Ky. 2010)
- Haney v. Yates, 40 S.W.3d 352, 355 (Ky. 2000)
- Clougherty Packing Co. v. Commissioner, 811 F.2d 1297, 1307 (9th Cir. 1987)
- Gulf Oil Co. v. Commissioner, 914 F.2d 396, 412 (3d Cir. 1990)
- Group Life & Health Insurance Co. v. Royal Drug Co., 440 U.S. 205, 211 (1979)
- Beech Aircraft Corp. v. United States, 797 F.2d 920, 922 (10th Cir. 1986)
- Stearns-Roger Corp. v. United States, 774 F.2d 414, 415 (10th Cir. 1985)
- Southern Financial Life Insurance Co. v. Combs, 413 S.W.3d 921, 932 (Ky. 2013)
- Commonwealth v. English, 993 S.W.2d 941, 945 (Ky. 1999)