

**KENTUCKY SUPREME COURT
PUBLISHED OPINIONS
DECEMBER 2009**

I. WORKERS' COMPENSATION

- A. Dennis Bradley, Administrator for the Estate of Carmelo Angel Isidoro Mayo v. Com. of Ky. Uninsured Employers' Fund; Hon. Marcel Smith, ALJ & Workers' Compensation Board**
2009-SC-000135-WC December 17, 2009

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Com. of Ky. Uninsured Employers' Fund v. Dennis Bradley, Administrator for the Estate of Carmelo Angel Isidoro Mayo; Bruce Rector, Guardian for Alexandra Del Carmen Dorantes Mejia, a Child; Gary Wise; Hon. Marcel Smith, ALJ & Workers' Compensation Board
2009-SC-000136-WC December 17, 2009

Opinion of the Court. All sitting; all concur. Mayo, an undocumented laborer from Mexico, was killed on the job in a trench collapse. His employer failed to purchase workers' compensation insurance or to qualify as self-insured; as such, the Kentucky Uninsured Employers' Fund ("UEF") was added as a party to the claim for benefits. The AJL awarded a lump-sum death benefit to the worker's estate and an income benefit to the worker's daughter-- a citizen and resident of Mexico. These awards were enhanced by 30% since KOSHA had determined that the employer failed to comply with numerous federal safety regulations. The UEF was ordered to pay all benefits in the event the employer failed to do so.

On appeal, the UEF raised two arguments: First, that the ALJ erred by failing to reduce the lump-sum benefit by 50 percent pursuant to KRS 342.130. That statute provides that compensation paid to alien, non-resident surviving spouses and/or children shall be reduced by 50 percent. UEF argued that this should also apply to the amount paid to the estate. The Court ruled otherwise, holding that the statute had no application to the lump-sum death benefit since it is payable to the estate, which is not mentioned in the statutes and "does not exist in a foreign jurisdiction and is not an alien widow, widower, or child."

Next, the UEF argued that, in the absence of statutory or contract authorization, sovereign immunity exempts the Commonwealth and its agencies from paying interest. Therefore, the UEF asserted it bore no responsibility for interest on the lump-sum death benefit. The Court

disagreed, holding KRS 342.760 requires the UEF to pay benefits when employers default on compensation liability and subrogates the UEF “to all rights of the person receiving such compensation from the fund.” Under Realty Improvement, one of these rights is to interest on past due benefits. Furthermore, KRS 342.790 authorizes the Attorney General to institute civil action against the employer to collect the lump-sum amount “with interest.” Therefore, the Court held that the UEF was liable for interest on past-due benefits.