

RENDERED: JULY 6, 2012; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-001610-MR

TRAVELERS INSURANCE
COMPANY

APPELLANT

ON REMAND FROM SUPREME COURT OF KENTUCKY
NO. 2009-SC-000015-DG

v. APPEAL FROM PIKE CIRCUIT COURT
HONORABLE EDDY COLEMAN, JUDGE
ACTION NO. 97-CI-00684

BLACKSTONE MINING
COMPANY, INC.

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * * * *

BEFORE: CLAYTON,¹ KELLER, AND TAYLOR, JUDGES.

¹ Senior Judge Daniel T. Guidugli was an associate panel member when this case was initiated in 2007 and concurred in the original Opinion rendered October 17, 2008. Senior Judge Guidugli completed his senior judge service with the Court of Appeals while the case was on discretionary review before the Supreme Court. Upon remand, Judge Denise Clayton has been assigned as substitute associate judge for this case.

TAYLOR, JUDGE: This case is again before us after the Kentucky Supreme Court, in *Blackstone Mining Company v. Travelers Insurance Company*, 351 S.W.3d 193 (Ky. 2010), reversed and remanded the Court of Appeal’s Opinion in Appeal No. 2007-CA-001610-MR rendered on October 17, 2008. The Supreme Court reinstated the circuit court’s summary judgment in favor of Blackstone Mining upon the limited issue of the validity of twenty-three miners’ written waivers of coverage under the Workers’ Compensation Act of this Commonwealth. The Supreme Court also remanded this case to the Court of Appeals with specific instructions to decide two remaining issues - “prejudgment interest and black lung.”²

We now fulfill the Supreme Court’s mandate and address these two remaining issues. A recitation of the underlying facts is unnecessary as the facts have been fully set forth by the Supreme Court in *Blackstone Mining*, 351 S.W.3d 193, which we incorporate here by reference. We begin by addressing Travelers’ argument surrounding the “black lung” issue and then address its second argument surrounding the “prejudgment interest” issue. Our review proceeds accordingly.

Travelers contends that the circuit court improperly rendered judgment deciding that a disability policy issued by Massachusetts Mutual Insurance covering twenty-three miners employed by Blackstone Mining provided adequate coverage under the Black Lung Benefits Act (BLBA). As Blackstone Mining was legally mandated to provide benefits under the BLBA to all its miners,

² These two issues were rendered moot by the Court of Appeals’ original disposition of Appeal No. 2007-CA-001610-MR.

Travelers claims that Blackstone Mining owes additional premiums for its coverage of the twenty-three miners under the BLBA in the amount of \$42,279.99. Conversely, Blackstone Mining believes that it owes no additional premiums as the disability policy fulfilled its legal obligation to provide benefits to the twenty-three miners under the BLBA. In fact, Blackstone Mining claims that it overpaid premiums to Travelers for black lung benefits.

The circuit court heard this matter without a jury under Kentucky Rules of Civil Procedure (CR) 54.02. As to the black lung issue, the parties agreed that the relevant facts were undisputed and submitted the matter to the circuit court for adjudication upon a legal issue – interpretation and application of the BLBA.³ If the disability policy provided adequate coverage under the BLBA, Blackstone Mining would recover for overpaid premiums; however, if the disability policy did not provide adequate coverage, Travelers would recover additional premiums owed. The circuit court concluded that the disability policy provided adequate coverage under the BLBA and awarded Blackstone Mining a total of \$117,861.25 for overpayment of both state workers’ compensation premiums and federal black lung premiums.⁴ Our review of legal issues proceeds *de novo*.

³ The Black Lung Benefits Act (BLBA) is found in Title IV of the Federal Coal Mine Health and Safety Act of 1969 and is specifically codified in 30 U.S.C. §§ 801-962.

⁴ The circuit court’s original judgment entered May 24, 2007, awarded Blackstone Mining Company, Inc., premium refunds totaling \$120,861.25. However, by amended judgment entered July 9, 2007, the circuit court amended the judgment to \$117,861.25.

Under the BLBA, every operator of a coal mine is liable for payment of compensation benefits, medical benefits, and other benefits to miners suffering disabling occupational diseases of the lung. 30 U.S.C. § 933; 20 C.F.R. § 726.4; *Lovilia Coal Co. v. Williams*, 143 F.3d 317 (7th Cir. 1998).⁵ Thus, the sole duty to provide benefits under the BLBA is placed upon the operator of a coal mine. To secure payment for such benefits, a mining operator must either qualify as a self-insurer or obtain insurance coverage. 30 U.S.C. § 933; 20 C.F.R. § 726.4. If a mining operator is not authorized to self-insure, the mining operator must secure a commercial policy to insure “the payment of benefits as required” under the BLBA. 20 C.F.R. §§ 726.201-726.202. It has been explicitly recognized that the insurance policy must “cover fully all of the coal operator’s liabilities under the BLBA,” and the insurance policy must contain a provision to pay benefits equal to those provided under the BLBA. *Lovilia Coal Co.*, 143 F.3d at 322;⁶ 20 C.F.R. §§ 726.204-726.207. Moreover, the insurance policy must be issued by a company or other person “authorized under the law of any State to insure workmen’s compensation.” 20 C.F.R. § 726.202.

In this case, Blackstone Mining ostensibly procured the disability policy to insure payment of black lung benefits commensurate with the mandates of the BLBA. However, the disability policy clearly did not provide for payment of medical benefits to the miners. Yet, medical benefits are integral benefits

⁵ Although not bound by opinions of the Seventh Circuit Court of Appeals, we view this opinion as properly setting forth the legal requirements as to insurance under the BLBA.

⁶ See Footnote 5.

provided under the BLBA. 20 C.F.R. §§ 725.701-725.707. And, the disability policy did not contain a provision to pay benefits corresponding to those benefits available under the BLBA. A review of the disability policy reveals that it was intended to merely provide replacement income for disabled miners rather than provide those miners the full panoply of benefits found under the BLBA.

In short, we conclude that the disability policy did not provide benefits commensurate with the benefits provided under the BLBA.⁷ Effectively, Travelers continued to provide black lung coverage under the BLBA for the twenty-three miners who rejected state workers' compensation coverage while employed by Blackstone Mining. Thus, we hold that Blackstone Mining owes Travelers additional premiums in the amount of \$42,279.99, and that the circuit court erred by rendering judgment in favor of Blackstone Mining upon this issue. As a result, Blackstone Mining's judgment below awarded by the circuit court in the amount of \$117,861.25 shall be reduced by \$42,279.99, thus entitling Blackstone Mining to a total judgment of \$75,581.26 in damages representing overpayment of state workers' compensation premiums.

Travelers next argues that the circuit court's award of prejudgment interest was erroneous. We agree.

⁷ Although unnecessary to our disposition of this appeal, we point out that the disability policy also appears lacking in other respects under the BLBA, particularly worrisome are survivor benefits, entitlement and amount of income benefits, Massachusetts Mutual Insurance Company's authorization to provide workers' compensation coverage in Kentucky, waiting periods for benefits, and limitations upon preexisting diseases.

In this Commonwealth, prejudgment interest is generally awarded on damages that are liquidated where the amount is undisputed. *See Owensboro Mercy Health System v. Payne*, 24 S.W.3d 675 (Ky. App. 2000). In the case *sub judice*, the actual amount of Blackstone Mining's damages for unearned or overpaid premiums were not fixed and remained disputed in good faith between the parties throughout the litigation as was Travelers' claim for additional premiums owed.⁸ Consequently, we conclude that neither party is entitled to prejudgment interest and postjudgment interest shall accrue from the date of the final judgment in this case on July 9, 2007.

For the foregoing reasons, the judgment of the Pike Circuit Court is reversed and this case is remanded for proceedings consistent with this opinion.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF AND ORAL ARGUMENT
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ORAL ARGUMENT FOR
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⁸ We note that the circuit court referenced by a calendar order entered January 22, 2005, that the parties had "stipulated damages." This stipulation was made in chambers on the date the damage issue was scheduled for jury trial, January 20, 2005. This case was commenced in 1997. The amounts purportedly stipulated for Blackstone Mining's claim were later reduced by amended judgment entered July 9, 2007. Thus, we cannot conclude that the damages were, in fact, liquidated during the course of this litigation.