

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-001091-MR

KENTUCKY GROWERS INSURANCE COMPANY

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 06-CI-01556

KENTUCKY STATE POLICE, a department of
KENTUCKY JUSTICE & PUBLIC SAFETY CABINET

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: CLAYTON AND STUMBO, JUDGES; GRAVES,¹ SENIOR JUDGE.

GRAVES, SENIOR JUDGE: Kentucky Growers Insurance Co. appeals from a summary judgment granted in favor of the Kentucky State Police (KSP). The sole issue in this appeal is the interpretation of KRS 304.20-160 which deals with the release of information between authorized agencies and insurance companies in cases involving arson. We affirm.

In early 2006, a homeowner insured by Kentucky Growers suffered a fire loss. An investigator employed by Kentucky Growers determined that the fire was

¹ Senior Judge John W. Graves sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

intentionally set, but the identity of the arsonist was unknown. Meanwhile, the KSP was conducting its arson investigation.

On August 4, 2006, Kentucky Growers provided the KSP with all the information it had gathered in the course of its investigation. In turn, Kentucky Growers requested all the relevant information that the KSP had gathered in its ongoing investigation. Kentucky Growers specifically requested copies of the pending investigation files. The KSP denied the request citing exemptions contained in KRS 17.150(2) and KRS 61.878(1)(h). Kentucky Growers then sent another letter seeking reconsideration because the information requested was made pursuant to KRS 304.20-160(4) and was not requested under 61.878(1)(h). The KSP again denied the request, but offered to allow Kentucky Growers to interview the investigator who worked on the case.

Kentucky Growers filed an administrative appeal of the KSP's disposition of its request for information. The Attorney General affirmed the decision of the KSP in terms of the Open Records Act, but declined to offer an opinion on whether the release of the information was required by KRS 304.20-160. Kentucky Growers then filed an action for declaratory judgment in the Franklin Circuit Court. Both parties filed motions for summary judgment. The trial court granted KSP's motion and held that KSP's offer to provide an interview with the investigator was sufficient under the Insurance Code and that KRS 17.150(2) exempts the production of pending investigation files. This appeal followed.

KRS 304.20-160(4) states:

Any insurer providing information to an authorized agency or agencies pursuant to subsections (1) or (2) of this section shall have the right to request information relevant to a claim

by an insured, and receive, within a reasonable time not to exceed thirty (30) days, the information requested.

Subsection (2) requires an insurer to notify and provide authorized agencies with information related to a fire loss the insurer believes is not accidental. KRS 304.20-150(2) defines “relevant” as “information having any tendency to make the existence of any fact that is of consequence to the investigation or determination of the issue more probable or less probable than it would be without the evidence.” The section does not otherwise define the word “information.” In the absence of a definition provided by a statute, words are to be accorded their plain everyday meanings. See KRS 446.080(4).

Under the rules of statutory construction, the duty of the Court of Appeals is to ascertain the intent of the Legislature based on the words of the statute itself rather than what may have been intended, but was not expressed. *Kipling v. City of White Plains*, 80 S.W.3d 776, 785 (Ky.App. 2001). KRS 304.20-160(4) allows insurers who have complied with subsections (1) and/or (2) to request and receive relevant information, but does not specify what form that information will take. *Webster’s Third New International Dictionary* 1160 (1966) defines information as “knowledge communicated by others or obtained from investigation, study, or instruction.”

We find that the KSP’s offer to provide the information requested through an interview with the investigator who worked on the case is sufficient compliance under the plain meaning of KRS 304.160-20(4). Kentucky Growers is entitled to the information contained in KSP’s investigation files, but not to copies of the files themselves. As KSP complied with KRS 304.20-160(4), we need not address the applicability of KRS 17.150 and KRS 61.878.

Accordingly, the judgment of the Franklin Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Don A. Pisacano
Miller, Griffin, & Marks, P.S.C.
Lexington, Kentucky

BRIEF FOR APPELLEE:

Roger G. Wright
Frankfort, Kentucky