

SUPREME COURT OF KENTUCKY

DISCRETIONARY REVIEW GRANTED
(Pending Cases Only)

DISCRETIONARY REVIEW GRANTED 12/12/12

Miami Management Company v. Bruner, 2012-SC-318-DG
Torts. Open and Obvious Doctrine. The issue in this case, arising out of a fall in a restaurant parking lot which had been plowed and salted after a winter storm, involves the applicability of Kentucky River Medical Center v. McIntosh, 319 S.W.3d 385 (Ky. 2010).

Oral argument-June 2013

DISCRETIONARY REVIEW GRANTED 8/21/13

Commonwealth v. Bedway, 2012-SC-771-DG
Criminal Law. DUI. KRS 189A.105(3). Issues include the scope of the right to counsel created by KRS 189A.105(3) and whether or not denial of the statutory right requires the exclusion of subsequently obtained evidence.

Oral argument-April 9, 2014

Dixon v. Daymar Colleges Group, 2012-SC-687-DG
Arbitration. Contract Law. Unconscionability. Issues include whether cost-prohibitiveness of arbitration can render an agreement to arbitrate unconscionable and unenforceable.

Oral argument-April 2014

DISCRETIONARY REVIEW GRANTED 11/13/13

Council on Developmental Disabilities, Inc. v. Cabinet for Health and Family Services, 2013-SC-357-DG

Open Records. KRS 209.140. Issues include whether a private agency which serves as an advocate for adults with mental disabilities may receive certain records from the Cabinet for Health and Family Services via an open records request.

Oral argument-August 2014

DISCRETIONARY REVIEW GRANTED 12/11/13

Muhammad v. Kentucky Parole Board, 2013-SC-420-DG

Criminal Law. Postincarceration Supervision. Issues include whether a defendant who made a plea bargain with the Commonwealth's Attorney to not revoke his postincarceration supervision is entitled to the benefit of that bargain even though KRS 532.043(5) gives full authority to the Parole Board to make that determination.

Oral argument-December 2014

Sargent v. Shaffer, 2013-SC-111-DG

Evidence Law. Jury Instructions. Medical Malpractice. Informed Consent. KRS 304.40-320(2). Issue is whether a jury instruction on informed consent in a medical negligence action must contain the duty enumerated in KRS 304.40-320(2).

Oral argument-June 2014

DISCRETIONARY REVIEW GRANTED 11/13/13 and CROSS MOTION 2/12/14

Banker v. University of Louisville Athletic Association, Inc., 2013-SC-108-DG **and** (Cross Motion) University of Louisville Athletic Association, Inc. v. Banker, 2013-SC-778-DG

Employment Law. Retaliatory Discharge. Issues involve the sufficiency of the evidence of causation or pretext to support the jury verdict for the discharged plaintiff.

Oral argument-February 2015

DISCRETIONARY REVIEW GRANTED 12/11/13 and

CROSS MOTION 2/12/14

Commonwealth v. McGorman, 2013-SC-149-DG **and** (Cross Motion) McGorman v. Commonwealth, 2013-SC-818-DG
Criminal Law. RCr 11.42. Issues include defense counsel's strategy in permitting a juvenile to be interviewed by police in counsel's presence in February of 2000.

Oral argument-May 2015

DISCRETIONARY REVIEW GRANTED 2/12/14

Maras v. Commonwealth, 2013-SC-267-DG
Criminal Law. KRS 508.140. Stalking. RCr 10.04. Post-Verdict Juror Statements. Issues include: (1) whether the elements of the stalking statute are met where the victim does not fear for her own safety, but does fear for the safety of others; (2) whether jurors' post-verdict comments suggesting that they may have misinterpreted the instructions are admissible to impeach the verdict.

Oral argument-December 2014

Carter v. Bullitt Host, LLC, 2013-SC-325-DG
Torts. Personal Injury. Open and Obvious Doctrine. Issues include whether application of the open and obvious doctrine allows for summary judgment in this case, arising out of a fall in an icy hotel parking lot.

Oral argument- October 2014

DISCRETIONARY REVIEW GRANTED 12/11/13 and CROSS MOTION 3/12/14

Commonwealth v. Wright, 2013-SC-226-DG and (Cross Motion Wright v. Commonwealth, 2013-SC-824-DG
Criminal Law. Jury Use of Evidence. Issues include the propriety of a jury's use of the prosecutor's laptop to replay audiotape of a drug transaction admitted into evidence as an exhibit.

Oral argument-December 2014

DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT 12/11/13 and CROSS MOTION GRANTED 3/12/14

Sparkman v. CONSOL Energy, 2013-SC-119-DG

CONSOL Energy v. Sparkman, 2013-SC-831-DG

Civil Procedure. Parties. Standing. Issues include whether the Court of Appeals properly vacated the trial court's judgment in favor a business entity that was not a named plaintiff.

DISCRETIONARY REVIEW GRANTED 3/12/14

B.H. v. Commonwealth, 2013-SC-254-DG

Criminal Law. Juvenile Law. Constitutional Law. Issues include whether KRS 510.140 is unconstitutional as applied when both the victim and the accused are under the age of consent and there is no proof of forcible compulsion, and whether KRS 531.335 may constitutionally be applied when both the accused and the victim are minors.

Oral argument-February 2015

Adams-Smyrichinsky v. Smyrichinsky, 2013-SC-812-DG

Family Law. Child Support. Emancipation. UIFSA. Issues include whether Kentucky or Indiana law regarding the age of emancipation applies when: (1) the initial child support order was entered in Indiana; (2) both parties subsequently moved to Kentucky; and (3) the Kentucky court has assumed continuing, exclusive jurisdiction to modify the support.

Oral argument-August 2014

DISCRETIONARY REVIEW GRANTED 3/20/14

Brewer v. Commonwealth, 2013-SC-467-DG

Criminal Law. KRS 508.032. Issues involve whether prior convictions for fourth-degree assault and surrounding circumstances are admissible in the guilt phase of KRS 508.032 prosecutions for third or subsequent offense fourth-degree assault of a KRS 403.720 "family member" or "member of an unmarried couple."

Oral argument- September 2014

DISCRETIONARY REVIEW GRANTED 4/9/14

Milam v. Commonwealth, 2013-SC-681-DG

Criminal Law. Warrantless Search. Issues include whether a fraternity house should be treated as a private residence or as an apartment building or hotel for purposes of searches and seizures.

Oral argument-February 2015

Commonwealth v. Duncan, 2013-SC-742-DG

Criminal Law. DUI. Issues include whether a police officer violated a DUI suspect's Fourth Amendment rights when he only offered to give him a blood test to detect alcohol in his blood stream after he failed a series of field sobriety tests.

Oral argument-March 2015

Keysor v. Commonwealth, 2013-SC-531-DG

Criminal Law. Police Questioning of a Defendant Represented by Counsel on Other Charges. Issues involve the impact of Montejo v. Louisiana, 556 U.S. 778 (2009) (overruling Michigan v. Jackson, 475 U.S. 625 (1986)) upon Kentucky cases dating back to Linehan v. Commonwealth, 878 S.W.2d 8 (Ky. 1994).

Oral argument- March 2015

Commonwealth v. Young, 2013-SC-367-DG

Criminal Law. KRS 514.040. Theft By Deception. Adoption. Birth Mother Living Expenses. Issues include whether the trial court correctly refused to dismiss theft by deception charges against birth parents who solicited and accepted living expenses from prospective adoptive parents without disclosing that they had already accepted living expenses from an adoption agency representing other prospective adoptive parents.

Oral argument-December 2014

DISCRETIONARY REVIEW GRANTED 6/11/14

Baker v. Magnum Hunter Production, Inc., 2013-SC-497-DG

Mineral Law. Oil and Gas. Issue is what is the correct definition in Kentucky law of "market value at the well" and what costs natural gas lessees may deduct when calculating the royalty to be paid to lessors.

Oral argument-February 2015

Norton Healthcare, Inc. v. Deng, 2013-SC-526-DG

Employment Law. Discrimination. Retaliation. Issues include whether summary judgment was properly granted dismissing a retaliation claim, whether certain statements were made during settlement negotiations and

whether the claimant established that it would have been futile for him to apply or re-apply for employment.

Oral argument-March 2015

Patton v. Bickford, 2013-SC-560-DG

Torts. Negligence. Causation. Qualified Immunity. Issues include whether summary judgment was properly granted based on qualified immunity of school officials and whether suicide is a superseding cause which extinguishes tort liability.

Oral argument-March 2015

State Farm v. Riggs, 2013-SC-555-DG

Contract. Automobile Insurance. Underinsured Motorist Coverage. Issues include whether an automobile insurance policy provision requiring underinsured motorist claims to be brought within the same time period as tort claims under the Motor Vehicle Reparations Act—two years from the date of the accident or last basic reparations payment, whichever is later—is valid and enforceable.

Oral argument- February 2015

DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT 6/11/14

Commonwealth v. Cox, 2013-SC-618-DG

Criminal Law. Constitutional Law. Fourth Amendment. Roadblocks. *Commonwealth v. Buchanon*, 122 S.W.3d 565 (Ky. 2003). Issue is whether a roadblock was unconstitutionally established and conducted under controlling Kentucky and federal law.

DISCRETIONARY REVIEW GRANTED 8/13/14

Allstate Insurance Company v. Smith, 2013-SC-732-DG

Insurance. MVRA. KRS 304.20-040(13) “Notice of First Renewal” Requirement. The question is whether, although the insured never requested or paid any premium for optional KRS 304.39-320 underinsured motorist coverage, the insurer adequately complied with the KRS 304.20-040(13) “notice of first renewal” requirement of “a notice stating in substance that added uninsured motorists, underinsured motorists, and personal injury protection coverages may be purchased by the insured.”

Oral argument-June 2015

Northern Kentucky University v. Weickgennant, 2013-SC-820-DG
Gender Discrimination. KRS 344.040. Issues include whether or not the Court of Appeals correctly followed Kentucky and federal employment discrimination precedent.

Oral argument-May 2015

Overstreet v. Kindred Nursing Centers Limited Partnership,
2013-SC-620-DG

Limitation of Actions. KRS 216.515. Issues include whether KRS 216.515 created a new cause of action or whether the cause of action was one for personal injury, and whether the statute of limitations for personal injury or for a newly established statutory action applies.

Oral argument-March 2015

Pate v. Dept. of Corrections, 2013-SC-558-DG

Pate v. Commonwealth, 2013-SC-559-DG

Criminal Law. KRS 439.3401. Violent Offender. Department of Corrections. Issues include whether Corrections acted properly when it reclassified an inmate convicted of a Class A felony drug offense from nonviolent offender to violent offender based on its changed interpretation of the violent offender statute.

Oral argument-June 2015

Nissan Motor Company v. Maddox, 2013-SC-685-DG

Torts. Products Liability. Design Defect. Punitive Damages. Issues include whether the plaintiff presented sufficient evidence to warrant a punitive damages instruction where the defendant car manufacturer complied with federal safety standards.

Oral argument-May 2015

Wagner's Pharmacy v. Pennington, 2013-SC-541-DG

Kentucky Civil Rights Act. KRS 344.040. Disability Discrimination. Issues include whether, under the KCRA, a claimant alleging disability discrimination based on morbid obesity required to prove that his or her condition is attributable to an underlying physiology.

Oral argument-March 2015

DISCRETIONARY REVIEW GRANTED 9/10/14

Sadler v. Van Buskirk, 2013-SC-809-DG

Family Law. Property Settlement Agreements. Retirement Accounts. Issues include whether the property settlement agreement provision stating that the ex-wife disclaimed her interest in the retirement account owned by the ex-husband was sufficient to rescind the form he filed with the investment company during the marriage naming her as beneficiary upon his death.

Oral argument-May 2015

Cabinet for Health and Family Services v. J.M.G., 2013-SC-797-DG

Contempt. Issue is whether the Family Court erred in holding the Cabinet for Health and Family Services in contempt as a result of the failure of an attorney employed by the Cabinet to follow statutes and court rules.

Commonwealth v. Parrish, 2013-SC-830-DG

Criminal Law. Evidence. KRS 189A.104. *Brady v. Maryland*, 373 U.S. 83 (1963). Issues include whether a police officer's failure to preserve evidence of the results of a Preliminary Breath Test (PBT) constituted a *Brady* violation, and the admissibility of a PBT below .08 as exculpatory evidence.

Oral argument-March 2015

Saint Joseph Healthcare, Inc. v. Thomas, 2014-SC-8-DG

Punitive Damages. KRS 411.184. Issues include whether or not physicians whom the hospital alleges are independent contractors are considered as employees of the hospital for the purpose of assessing punitive damages under the provisions of the federal Emergency Medical Treatment and Active Labor Act (EMTALA), whether an award of punitive damages was so excessive as to constitute a denial of federal Constitutional due process, and the interplay between the EMTALA and KRS 411.184.

Oral argument-May 2015

DISCRETIONARY REVIEW GRANTED 10/15/14

Asbury University v. Powell, 2014-SC-95-DG

Employment Law. Retaliatory Discharge. Issues include (1) the propriety of recovery for retaliation absent an underlying violation of the Kentucky

Civil Rights Act as well as (2) the appropriate jury instructions for retaliatory discharge and (3) the applicability of University of Texas Southwestern Medical Center v. Nassar, 133 S. Ct. 2517 (2013).

Oral argument-June 2015

Tower Insurance v. Horn, 2014-SC-015-DG

Contract. Automobile Insurance. Employee Exclusion. Severability-of-Interests Clause. Issues include whether the severability-of-interests clause in a business auto insurance policy operates to defeat the policy's employee exclusion when the "insured" seeking coverage is not the policyholder business, but a permissive user.

Oral argument-June 2015

Charalambakis v. Asbury University, 2014-SC-215-D

Employment Law. Retaliatory Discharge. Issues include the propriety of recovery for retaliation absent an underlying violation of the Kentucky Civil Rights Act.

Oral argument-June 2015

Jamgotchian v. Kentucky Horse Racing Commission,
2014-SC-108-DG

Administrative Law. Constitutional Law. The question presented is whether "claiming jail" regulation 810 KAR 1:015 § 1(6) is unconstitutional as violative of the "dormant" Commerce Clause of the United States Constitution.

Oral argument-June 2015

Pettingill v. Pettingill, 2014-SC-456-DGE

Domestic Violence. Appellate Procedure. Issues involve the use of "lethality factors" in a domestic violence determination and the interplay between CR 75.07(4) and CR 98 when the trial videotape is omitted from the record on appeal.

Oral argument-May 2015

DISCRETIONARY REVIEW GRANTED 8/13/14 and CROSS MOTION GRANTED 10/15/14

C.D.G. v. N.J.S., 2014-SC-329-DGE **and** (Cross Motion) N.J.S. v. C.D.G.,
2014-SC-495-DGE

Child Support. Issues include whether KRS 403.211 or other Kentucky law requires that Social Security dependent retirement benefits received by a child must be credited against the child support obligation, and whether a lump-sum payment of dependent benefits creates an "overpayment" which must be reimbursed by the child's representative payee to the obligor.

Oral argument-May 2015

DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT
10/15/14

Estate of McVey v. Dept. of Revenue, 2014-SC-13-DG

Estate and Inheritance Tax. Wills. Administrative Law. Issues include the effect of a will clause directing that inheritance taxes be deducted as a cost of administration and taxation of "bequests of tax."

DISCRETIONARY REVIEW GRANTED 12/10/14

Penix v. DeLong, 2014-SC-83-DG

Trespass. Damages. KRS 364.130. Issues involve whether treble damages may be imposed for trespass upon a neighbor's timber by an independent contractor logging for the allegedly trespassing neighbor.

Oral argument-August 2015

Owen v. University of Kentucky, 2014-SC-137-DG

Kentucky Civil Rights Act. KRS 344.270. Election of Remedies. Whether an employee who receives an order of dismissal from the Kentucky Commission on Human Rights and does not appeal from that order may subsequently file a lawsuit in circuit court based on the same claim. KRS 344.270.

Oral argument-August 2015

McDaniel v. Commonwealth, 2014-SC-241-DG

DeShields v. Commonwealth, 2014-SC-242-DG

Martin v. Commonwealth, 2014-SC-243

Criminal Law. Due Process. KRS 532.043. Sex Offender Post-incarceration Supervision. Issues include: (1) whether the application of the amended version of KRS 532.043, which replaced the judicially-based revocation procedure with an administratively-based revocation procedure, to defendants who pled guilty prior to the amendment violates due process;

and (2) whether the defendants' *pro se* motions should be construed as RCr 11.42 motions or CR 60.02 motions.

DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT
12/10/14

Commonwealth v. Taylor, 2014-SC-211-DG

Criminal Law. Palpable Error. Issues involve the lack of defense objection to reference at trial to the defendant's testimony in support of suppression of evidence seized from his bedroom.

Commonwealth v. Rank, 2014-SC-266-DG

Criminal Law. RCr 11.42. Issues concern whether the defendant was entitled to an evidentiary hearing regarding the prejudice prong of his RCr 11.42 argument for ineffective assistance of guilty plea counsel and especially concerning a potential extreme emotional disturbance defense.

DISCRETIONARY REVIEW GRANTED 2/11/15

Bays v. Kiphart, 2014-SC-324-DG

Wills. Renunciation. Fraud on Curtesy Rights. May life insurance be KRS 392.020 "surplus property"?

Oral argument-August 2015

Countryway Insurance v. United Financial Casualty Insurance,
2014-SC-265

Insurance Law. Automobile Accidents. Uninsured Motorist Coverage. Where an injured party is covered by more than one uninsured motorist policy, but both contracts contain excess clauses, should the damages be apportioned between the companies or should a *per se* rule deeming primary the injured party's uninsured motorist policy apply?

Oral argument-August 2015

DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT
2/11/15

Commonwealth v. Jones, 2014-SC-306-DG

Criminal Law. Criminal Syndicate. Does evidence of organizing and funding "credit mules" to procure discounted cell phones for resale (with no

intent to fulfill the two-year contracts) suffice to present a jury question of engaging in organized crime as proscribed by KRS 506.120?

Commonwealth v. Rieder, 2014-SC-210-DG

Criminal Law. Evidence. Palpable Error. Issues include whether the admission of the police officer's statement that the defendant did not have a right to use his gun constituted palpable error.

DISCRETIONARY REVIEW GRANTED 3/25/15

Martin v. O'Daniel, 2014-SC-373-DG and

Sapp v. O'Daniel, 2014-SC-389-DG and

Motley v. O'Daniel, 2014-SC-394-DG

Torts. Malicious Prosecution. Issues involve availability of an immunity defense as well as evidentiary sufficiency, including applicability of federal malicious prosecution standards to this state action filed against three state police troopers following acquittal of a forgery charge.

Burke v. Commonwealth, 2014-SC-472-DG

Criminal Law. Hate Crimes. In this prosecution for four assaults, issues include the constitutionality and applicability of "hate crime" statute KRS 532.031.

Philadelphia Indemnity Insurance v. Tryon, 2014-SC-354-DG

Encompass Indemnity Company v. Tryon, 2014-SC-357-DG

Contract. Automobile Insurance. Underinsured Motorist Coverage.

Whether the "owned but not scheduled for coverage" exclusion in the policies covering the insured's cars was enforceable and prevented the insured from stacking UIM coverage when he was injured on his motorcycle.

Oral argument-September 2015

DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT 3/25/15

Commonwealth v. McKee, 2014-SC-255-DG

Criminal Law. RCr 11.42. Ineffective Assistance of Counsel. Issues include whether the defendant met his burden of proving prejudice under RCr 11.42 when he alleged that: (1) counsel failed to obtain evidence prior

to trial; and (2) the evidence may have allowed the defense's accident reconstructionist to provide a favorable opinion regarding the cause of the fatal accident.

Kentucky Properties Holding, LLC v. Sproul, 2014-SC-368-DG
Property Law. Public and Private Roads. KRS 178.116. Did the lower courts conduct a proper analysis of: (1) whether the road crossing the plaintiff's property was public or private; and (2) whether any public portion of the road had been discontinued under KRS 178.116?

DISCRETIONARY REVIEW GRANTED 5/6/15

Clayburn v. Commonwealth Transportation Cabinet, 2014-SC-443-DG
Administrative Law. Board of Claims. Issues include the scope of the Transportation Cabinet's responsibility for maintaining a "gore area" known to contain potentially hazardous sign debris.

Jones v. Bennett, 2014-SC-425-DG
Negligence. Qualified Official Immunity. Law Enforcement. Issues include whether a police officer is entitled to qualified official immunity when his failure to prevent a reportedly drunk driver from re-entering his vehicle and turning onto a busy highway resulted in a car accident that seriously injured an innocent motorist.

DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT 5/6/15

Barber v. Bradley, 2014-SC-424-DG
Family Law. Dissolution. Division of Property. KRS 403.190. Issues include whether the trial court correctly concluded that: (1) the husband gifted one-half of the equity in the marital residence to the wife; (2) the husband presented insufficient proof that certain items of personal property were his non-marital property; and (3) the parties' marital personal property could be equitably divided by random drawing.

Commonwealth v. Dixon, 2014-SC-511-DG
Criminal Law. Suppression of Evidence. Issues involve whether evidence was observed from outside the curtilage of mobile home.

DISCRETIONARY REVIEW GRANTED 6/3/15

Grider v. Commonwealth, 2014-SC-468-DG

Criminal Law. Motions in Limine. Admonitions. Motions for Mistrial. The issue is whether testimony which clearly violates the trial court's order on a motion in limine prohibiting such evidence can be adequately cured by an admonition, or whether the trial court, upon a timely motion, must grant a mistrial.

AEP Industries, Inc. v. B.G. Properties, Inc., 2014-SC-512-DG

Contracts. Specific Performance. Material Breach by a Non-Binding Appraisal. The first issue is whether appeal of an order granting specific performance on an option to purchase property is moot where the party ordered to specifically perform transfers the property in exchange for payment, does not seek a stay while on appeal of the order granting specific performance, or does not post a supersedeas bond. A second issue is whether a non-binding appraisal may constitute a "material breach" of an option to purchase agreement which would suspend performance of the agreement for sale of property.

DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT 6/3/15

Commonwealth v. Miles, 2014-SC-558-DG

Criminal Procedure. Ineffective Assistance of Counsel. Cumulative Error. The issue is whether it is proper to evaluate an RCr 11.42 motion on the basis of cumulative error given the requirement that there must exist a reasonable probability that the outcome would have been different if not for counsel's multiple errors.

Story v. Kentucky Court of Justice Dismissal Appeal Board,
2014-SC-626-DG

Administrative Law. Evidentiary Sufficiency. Issues involve the discharge of a court designated worker for insubordination in the form of divulging to a judge the contents of an e-mail from the CDW's immediate supervisor regarding a policy change involving the judge's work.

Commonwealth v. Tapp, 2014-SC-607-DG

Criminal Law. Probation Revocation. KRS 533.020(4). Issues include whether the defendant's probation automatically discharged prior to his revocation hearing when the circuit court issued an arrest warrant upon which the defendant was arrested several days *before* the probationary period was set to expire, but the revocation hearing was not held until several days *after* the probationary period was set to expire.

DISCRETIONARY REVIEW GRANTED 8/12/15

Newkirk v. Commonwealth, 2014-SC-749-DG

Criminal Law. Unavailable Surveillance Videotape. Issues involve the Court of Appeals reversal of the trial court's dismissal without prejudice after a pretrial ruling deeming inadmissible proof of the contents of unavailable surveillance videotape.

McAbee v. Chapman, 2014-SC-555-DG

Evidence. KRE 615(3). Separation of Witnesses. Experts. Issues include whether the trial court properly exempted the defendant's expert from the separation of witnesses rule based on counsel's statement that the expert's presence was essential to management of the case.

A.H. v. W.R.L., 2015-SC-247-DGE

Family Law. Custody. Same-Sex Relationship. Step-Parent Adoption. Intervention of Right. Issues include whether the trial court erred by allowing the child's biological mother's ex-partner, who allegedly co-parented the child for seven years and has a pending custody petition, to intervene in the step-parent adoption case that would declare mother's husband to be the child's second legal parent.

Furlong Development Company v. Georgetown Scott County Planning and Zoning Commission, 2014-SC-594-DG

Mutual Release. Performance Bond. The main issue is whether a planning commission may call for payment on a performance bond where a developer on whose behalf the bond was issued in favor of the planning and zoning commission, defaults on its loan obligation to the bank and executes a deed in lieu of foreclosure to the bank and its property management company. And if so, specifically, what is the effect of the language of the mutual release which absolves the developer's surety of any further liability upon execution of the deed in lieu of foreclosure, and its

effects on the bond obligations and the developer's duty to indemnify the surety?

Department of Insurance v. United Insurance Company of America, 2014-SC-549-DG

KRS 304.15-420. Unclaimed Life Insurance Benefits Act. The issue is whether the requirement of this Act is substantive, and therefore, should only apply prospectively to policies issued on or after the effective date of the Act. Specifically, the Act requires that life insurance companies doing business in Kentucky on a semi-annual basis make a good faith effort to determine whether benefits are due based upon review of the Social Security Administration's Death Master File to discover insureds' names and to attempt to locate beneficiaries of their insureds within 90 days of a DMF match to inform them of the claims procedure.

Brown-Forman Corporation v. Merrick, 2014-SC-717-DG

Nuisance. Trespass. State Law Tort Claims. Preemption. The issue to be determined is whether the federal Clean Air Act preempts state law tort claims.

DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT **8/12/15**

Grubb v. Smith, 2014-SC-641-DG

Premises Liability. The issue in this premises liability case is the application of the *McIntosh* and *Shelton* cases to a case involving a depressed area of the pavement in a parking lot. The trial court, following a bench trial, found the condition to be "unreasonably dangerous," and found the landowner and the business manager liable. The Court of Appeals reversed this decision, finding the condition to be "open and obvious." A second issue is that of the joint and several liability of the business manager. The trial court found the manager jointly and severally liable. The Court of Appeals reversed that finding, on the grounds that the manager did not have sufficient control of the premises to be held jointly and severally liable.

Cassetty v. Commonwealth, 2014-SC-716-DG

Recusal of Judge. Application of Judicial Ethics Opinion. The issue is whether a trial judge who is also the drug court judge may recuse himself

upon request when determining whether to revoke diversion and sentence a defendant who has failed the drug court program. A judicial ethics opinion which indicates that a trial judge may participate in such a determination unless there is a basis to disqualify them has been interpreted by trial judges as ethically precluding recusal upon a request to do so.

Hollaway v. Direct General Insurance Company of Mississippi, Inc., 2014-SC-758-DG

Insurance. Bad Faith. Discovery. Expert Opinions. The issue to be resolved is whether the Movant created an issue of fact in regard to the alleged bad faith conduct of the insurer by submitting a summary of the opinions of her expert witness who would testify that the insurer had engaged in bad faith by its delay in settling the Movant's personal injury claim. If so, then the trial court's summary judgment in favor of the insurer was premature and should be reversed.

Carver v. Carver, 2015-SC-212-DGE

Family Law. Child Support. Disability. Deviation. *Artrip v. Noe*, 311 S.W.3d 229 (Ky. 2010). Issues include: (1) whether the trial court committed reversible error by failing to follow *Artrip*, which holds that disability payments made to a child because of one parent's disability cannot be used to reduce the child support obligation of the other parent; and (2) whether the trial court properly deviated from the child support guidelines due to the disabled father's living expenses.

CHFS v. S.H., 2015-SC-185-DGE

Family Law. Rules. Issues involve whether the witness and exhibit lists requirements of FCRPP 7(1) apply to termination of parental rights cases.

Davis v. Davis, 2014-SC-751-DG

Family Law. Marital Dissolution. Property Settlement Agreements. Issues involve whether lack of reference to a filed property settlement agreement in a dissolution decree voids such an agreement.

