

UPDATED: 02/04/2013

FEBRUARY 2013

ORAL ARGUMENT

CALENDAR

Report Updated On: 02/04/2013

2/04/2013

FEBRUARY, 2013

February 4, 2013

**1:30 P.M. MOTION PANEL, JUDGE CAPERTON, PRES.,
JUDGE LAMBERT AND JUDGE STUMBO, ASSOC.**

February 5, 2013

**9:15 – 9:55 A.M., ORAL ARGUMENT, #2011-CA-002159 &
#2011-CA-002205, COMMONWEALTH OF KENTUCKY V.
LOUIS LEE ROBERTSON, JR., JUDGE MAZE, PRES.,
JUDGE STUMBO AND JUDGE THOMPSON, ASSOC.**

10:00 A.M. – FULL COURT MEETING

**1:45 – 2:25 P.M., ORAL ARGUMENT, #2011-CA-965,
2011-CA-1575 & 2012-CA-000491, GULF COAST FARMS,
LLC, ET AL. V. FIFTH THIRD BANK – JUDGE MAZE,
PRES., JUDGE CAPERTON AND JUDGE VANMETER,
ASSOC.**

**PHONE NUMBERS WHERE PANEL MEMBERS CAN BE REACHED WHEN ORAL
ARGUMENTS SCHEDULED:**

FRANKFORT – Contact Mary Zagale (502) 573-7920

SHEPHERDSVILLE – Contact Layne Abell or Paulita Keith - (505) 543-7104

MADISONVILLE – Contact Karen McKnight - (270) 824-7502

**LOCATION: COURT OF APPEALS COURTROOM, 360 DEMOCRAT DRIVE,
FRANKFORT, KENTUCKY**

DATE: Tuesday, February 5, 2013

09:15 AM PJ: MAZE, HON. IRV

STUMBO, HON. JANET L.

THOMPSON, HON. KELLY

2011CA002159

COMMONWEALTH OF KENTUCKY v LOUIS LEE ROBERTSON Jr

2011CA002205

Trial court granted Robertson 11.42 relief in that his counsel failed to object to Commonwealth's closing argument at trial. Commonwealth appeals, asserting no prosecutorial error/misconduct. Robertson cross-appeals the denial of a juvenile transfer hearing, as he was prejudiced by ineffective counsel at a critical stage of trial.

NELSON COUNTY

HON JOHN DAVID SEAY

Appellant Atty:

Appellant Name:

LAWSON, JAMES

COMMONWEALTH OF KENTUCKY

Appellee Atty:

Appellee Name:

HOLM, KATHERINE (KATE)
SCHMIDT, KATHLEEN
STRONG, ROBERT

ROBERTSON, LOUIS

** NOTE:PREVIOUSLY ON 1/16/13 AT 3:15 PM AND 1/17/13 AT 11:30 AM IN LOUISVILLE

01:45 PM PJ: MAZE, HON. IRV

CAPERTON, HON. MICHAEL O.

VANMETER, HON. LAURANCE B.

2011CA000965

GULF COAST FARMS, LLC v FIFTH THIRD BANK

2011CA001575

2012CA000491

Consolidated appeals from order dismissing counterclaims to action for default on notes, and for summary judgment on bank's claim for a first perfected security interest on assets which were the subject of the note. 1st appeal: dismissal of counterclaims for breach of duty of good faith & fair dealing, fraud & deceit, negligent misrepresentation, breach of fiduciary duty, conversion, commercially unreasonable conduct, and tortious interference. 2nd appeal: Summary judgment for bank on claims relating to the Timpanogas assets. 3rd appeal: denial of CR 60.02 based on the newly discovered evidence produced during discovery supporting its claims for reformation of the contract based on mutual mistake.

CIVIL

FAYETTE COUNTY

HON THOMAS L CLARK

Appellant Atty:

Appellant Name:

BROWN, DANIELLE
GETTY, RICHARD
PARKER, JENNIFER
WAGGONER, SARA

GULF COAST FARMS, LLC

Appellee Atty:

Appellee Name:

MEUSER, MICHAEL
MILLER, THOMAS

FIFTH THIRD BANK

** NOTE:40 MINUTE ORAL - PREVIOUSLY ON 2/5/13 AT 2:30 PM AND ON 2/12/13 AT 3:15 PM AND AT 3:15 ON 2/5/13

**LOCATION: HOPKINS COUNTY JUSTICE CENTER, CIRCUIT COURTROOM II, 120
EAST CENTER STREET, MADISONVILLE, KENTUCKY**

DATE: Friday, February 8, 2013

01:00 PM PJ: NICKELL, HON. C. SHEA

CLAYTON, HON. DENISE G.

MOORE, HON. JOY A.

2012CA000207

STEVEN E. FURLONG v DONNA H. FURLONG

Whether trial court erred in: (1) re-opening a divorce case and amending the settlement agreement entered therein four years earlier; (2) finding an "intentional violation" of the terms of the settlement agreement with respect to retirement benefits; and (3) awarding attorneys fees.

WARREN COUNTY

HON MARGARET RYAN HUDDLESTON

Appellant Atty:

Appellant Name:

LANPHEAR, DAVID

FURLONG, STEVEN

Appellee Atty:

Appellee Name:

BRODERICK, DAVID
BRODERICK, RUTH

FURLONG, DONNA

** NOTE:

01:45 PM PJ: MOORE, HON. JOY A.

CLAYTON, HON. DENISE G.

NICKELL, HON. C. SHEA

2012CA000099

PAULINE MOONEY v ALCOA FUELS, INC.

2012CA000164

Mineral royalties case: Whether the trial court erred in its legal determination of deeds wherein appellant argues the deed descriptions cannot be located with reasonable certainty and whether the trial court erred in its determination of entitlement to coal royalties.

CIVIL

WEBSTER COUNTY

HON C. RENE' WILLIAMS

Appellant Atty:

Appellant Name:

FREEBURGER, SANDRA

MOONEY, PAULINE

Appellee Atty:

Appellee Name:

CUBBAGE, BENJAMIN JR
WEST, CHARLES

ALCOA FUELS, INC.

RICH, JOEL

RICH, TRUSTEE AD LITEM FOR, JOEL

** NOTE:40 MINUTE ORAL

**LOCATION: COURT OF APPEALS COURTROOM, 360 DEMOCRAT DRIVE,
FRANKFORT, KENTUCKY**

DATE: Tuesday, February 19, 2013

10:30 AM PJ: STUMBO, HON. JANET L.

ACREE, HON. GLENN E.

COMBS, HON. SARA W.

2012CA000962

DANNY GIBSON v READY MIX CONCRETE

Appeal from judgment in suit brought to collect an account. Issues are whether the trial court erred in holding Gibson liable under a theory of partnership by estoppel, the continued viability of the common law doctrine of promoter liability, and the award of interest.

CIVIL

PULASKI COUNTY

HON DAVID A. TAPP

Appellant Atty:

**ANDERSON, DAVID
MORROW, RYAN
VITALE, MICHAEL**

Appellant Name:

GIBSON, DANNY

Appellee Atty:

**MANDT, JOHN
MCMAHON, ERIN
O'CARRA, LEILA**

Appellee Name:

READY MIX CONCRETE

**** NOTE:**

11:15 AM PJ: STUMBO, HON. JANET L.

ACREE, HON. GLENN E.

COMBS, HON. SARA W.

2012CA000787

KIM CARROLL v REUBEN J. WRIGHT

Appeal from defense verdict in personal injury case. Issues include whether the trial court erred in refusing to grant a directed verdict on liability, whether the instructions were insufficient and whether trial court erred in permitting Appellee to argue unforeseeable circumstances when court of appeals had ruled that sudden emergency defense could not be presented.

CIVIL

ELLIOTT COUNTY

HON REBECCA K. PHILLIPS

Appellant Atty:

WILHOIT, WILLIAM

Appellant Name:

CARROLL, KIM

Appellee Atty:

MCNEILL, JOHN

Appellee Name:

WRIGHT, REUBEN

**** NOTE:**

**LOCATION: COURT OF APPEALS COURTROOM, 360 DEMOCRAT DRIVE,
FRANKFORT, KENTUCKY**

DATE: Tuesday, February 19, 2013

01:00 PM PJ: ACREE, HON. GLENN E.

COMBS, HON. SARA W.

STUMBO, HON. JANET L.

2009CA002269

JEFFREY FRANZ v ASHLAND HOSPITAL CORPORATION

2009CA002313

2010CA000431

Civil; Appeal and cross-appeal in a medical negligence action: The appeal contends that the trial court erred in: (1) dismissing appellant's medical battery and strict liability claims against Appellee King's Daughters' Medical Center; (2) bifurcating the medical negligence claims against individual physicians from the derivative claims against KDMC and Appellee Cumberland Cardiology; (3) requiring each party to pay for the expert depositions that it scheduled without requiring appellees to prove the reasonableness of the fees charged by their experts (4) excluding certain evidence at trial; and (5) conducting voir dire in a flawed manner. On cross-appeal, Appellee-Cross Appellant Michael Richman asserts that KRE 507 offered absolute protection to his medical records.

CIVIL

BOYD COUNTY

HON C DAVID HAGERMAN

Appellant Atty:

Appellant Name:

BUBA, VICKI

FRANZ, JEFFREY

DESKINS, ROBERT

OLDFATHER, ANN

Appellee Atty:

Appellee Name:

EDWARDS, CARL JR

ASHLAND HOSPITAL CORPORATION

HALL, WILLIAM JR

HUGHES, CATHERINE

CUMBERLAND CARDIOLOGY, P.S.C

WILLIAMS, KENNETH JR

DILL, GORDON JR

RICHMAN, MICHAEL

HERKLOTZ, JOHANN

SMITH, KENNETH

** NOTE:

**LOCATION: BULLITT COUNTY JUDICIAL CENTER, 250 FRANK E. SIMON AVENUE,
COURTROOM 301, THIRD FLOOR, SHEPHERDSVILLE, KENTUCKY**

DATE: Wednesday, February 20, 2013

10:00 AM PJ: TAYLOR, HON. JEFF S. DIXON, HON. DONNA L. LAMBERT, HON. JAMES H.
2011CA002250 RANDALL S. WALDMAN v PBI BANK, INC

Whether circuit court erred by granting summary judgment in favor of appellee.

CIVIL	BULLITT COUNTY	HON RODNEY BURRESS
<u>Appellant Atty:</u>		<u>Appellant Name:</u>
WILSON, JOHN WILSON, MICHAEL		WALDMAN, RANDALL

<u>Appellee Atty:</u>		<u>Appellee Name:</u>
MCTIGHE, CHADWICK HATCHER, JENNIFER		LOUISVILLE GALLERIA, LLC PBI BANK, INC

**** NOTE:**

10:45 AM PJ: TAYLOR, HON. JEFF S. DIXON, HON. DONNA L. LAMBERT, HON. JAMES H.
2011CA002288 JASON NAPIER v COMMONWEALTH OF KENTUCKY

Whether circuit court erred by denying a motion for mistrial.

CRIMINAL	LINCOLN COUNTY	HON DAVID A. TAPP
<u>Appellant Atty:</u>		<u>Appellant Name:</u>
SHOUSE, THEODORE		NAPIER, JASON

<u>Appellee Atty:</u>		<u>Appellee Name:</u>
CONWAY, JACK MORROW, BRYAN		COMMONWEALTH OF KENTUCKY

**** NOTE:**

**LOCATION: BULLITT COUNTY JUDICIAL CENTER, 250 FRANK E. SIMON AVENUE,
COURTROOM 301, THIRD FLOOR, SHEPHERDSVILLE, KENTUCKY**

DATE: Wednesday, February 20, 2013

11:30 AM PJ: TAYLOR, HON. JEFF S.

DIXON, HON. DONNA L.

LAMBERT, HON. JAMES H.

2012CA000310

R.B., A CHILD UNDER EIGHTEEN v COMMONWEALTH OF KENTUCKY

Whether circuit court erred by committing a juvenile to the Department of Juvenile Justice as a juvenile sexual offender.

FAYETTE COUNTY

HON KIMBERLY N BUNNELL

Appellant Atty:

Appellant Name:

SCHMIDT, KATHLEEN

R.B., A CHILD UNDER EIGHTEEN

WAMPLER, JOHN

Appellee Atty:

Appellee Name:

CONWAY, JACK

COMMONWEALTH OF KENTUCKY

LARSON, RAYMOND

MESSER, ELIZABETH

**** NOTE:**
