

04/27/2009

APRIL 2009

ORAL ARGUMENT

CALENDAR

04/27/2009

**APRIL, 2009**

**APRIL 6, 2009**

1:30 P.M., MOTION PANEL, JUDGE THOMPSON, PRES.,  
JUDGE LAMBERT, AND SR. JUDGE BUCKINGHAM,  
ASSOC.

**APRIL 7, 2009**

10:00 A.M. **COURT MEETING**

1:00 – 1:30 P.M., ORAL ARGUMENT, 2008-CA-000331,  
TERRY MALIN V. DEWAYNE JONES, ET AL.,  
JUDGE WINE, PRES., JUDGE CAPERTON AND  
JUDGE THOMPSON, ASSOC.

1:45 –2:25 P.M., ORAL ARGUMENT, 2007-CA-002549 &  
2008-CA-000023, THE REVENUE CABINET, ET AL. V.  
ASWORTH CORPORATION, ET AL., JUDGE  
VANMETER, PRES., JUDGE CLAYTON AND JUDGE  
NICKELL, ASSOC.

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

**FRANKFORT – Contact Mary Zagale - (502) 573-7920**

**LOUISVILLE – Contact Marti Dodd – (502) 595-3440**

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

DATE: Tuesday, April 07, 2009

1:00 PM PJ: WINE ACREE THOMPSON  
2008CA000331 TERRY MALIN ET AL. VS DEWAYNE JONES ET AL.

The Malins appeal a S/J dismissing their claims for slander of title and interference with a contract and prospective advantage relating to an option contract on property in London, KY. It was undisputed that the Appellees had no reasonable basis upon which to believe they had an option to purchase property that the Malins were selling, yet refused to release their option, causing the Malins to lose a sale.

CIVIL LAUREL COUNTY GREGORY A. LAY

Appellant Atty:

Appellant Name:

SMITH , DAVID O.

NANCY MALIN

TERRY L. MALIN

SMITH , MARCIA A.

NANCY MALIN

TERRY L. MALIN

Appellee Atty:

Appellee Name:

HAUSER , W PATRICK

DEWAYNE JONES

RHONDA JONES

\*\*NOTE:ORIGINALLY AT 1:45 PM

1:45 PM PJ: VANMETER CLAYTON NICKELL  
2007CA002549 THE REVENUE CABINET, COMMONWEALTH OF KY. VS ASWORTH CORPORATION ET AL.

2008CA000023 Taxation: whether trial court erred in finding corporations had sufficient nexus with Kentucky so as to be subject to KY corporate income tax; method of determining apportionment; whether refunds are immediately due.

CIVIL FRANKLIN COUNTY THOMAS D. WINGATE

Appellant Atty:

Appellant Name:

FERGUSON , LAURA M

THE REVENUE CABINET, COMMONWEALTH OF KY.

Appellee Atty:

Appellee Name:

SMART , JENNIFER SARTOR

ASWORTH CORPORATION

D AVIATION SERVICES, INC.

HT-FORUM, INC

SOMMER , MARK F

ASWORTH CORPORATION

D AVIATION SERVICES, INC.

\*\*NOTE:PREVIOUSLY AT 2:30 PM AND ON 3/23/09 AT 10:45 AM - 40 MINUTE ORAL

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

DATE: Friday, April 24, 2009

---

1:00 PM PJ: KELLER CLAYTON LAMBERT, (JAMES)  
2007CA002163 INDUSTRIAL RISK INSURERS ET AL. VS GIDDINGS & LEWIS, INC. ET AL.

Industrial Risk Insurers (IRI) appeals from the circuit court's summary judgment. The circuit court dismissed IRI's complaint based on the economic loss rule. IRI argues the rule does not apply in Kentucky and, if it does, the destructive and calamitous event exception applies. Furthermore, IRI argues claims of negligent misrepresentation and fraud fall outside the economic loss rule. Appears to be little, if any, law on point.

CIVIL GRAVES COUNTY JOHN T DAUGHADAY

Appellant Atty:

Appellant Name:

.....  
BIGONESS , JAMES J.

HARTMAN , KIMBERLY A.

.....  
ALLIANZ INSURANCE COMPANY  
CIGNA PROPERTY AND CASUALTY INSURANCE COMPANY  
FIREMAN'S FUND INSURANCE COMPANY  
FIREMEN'S INSURANCE COMPANY OF NEWARK, NEW JERSEY  
GREAT AMERICAN INSURANCE CORPORATION  
HARTFORD FIRE INSURANCE COMPANY  
HARTFORD STEAM BOILER INSPECTION AND INSURANCE COMPANY  
INDUSTRIAL RISK INSURERS  
INGERSOLL-RAND COMPANY  
MOTORS INSURANCE CORPORATION  
SUMITOMO MARINE AND FIRE INSURANCE COMPANY, LTD  
THE CONTINENTAL INSURANCE COMPANY  
THE FIDELITY AND CASUALTY COMPANY OF NEW YORK  
THE GLENS FALLS INSURANCE COMPANY  
TOKIO MARINE AND FIRE INSURANCE COMPANY, LTD  
YASUDA FIRE & MARINE INSURANCE COMPANY OF AMERICA  
ZURICH AMERICAN INSURANCE COMPANY  
ALLIANZ INSURANCE COMPANY  
CIGNA PROPERTY AND CASUALTY INSURANCE COMPANY  
FIREMAN'S FUND INSURANCE COMPANY  
FIREMEN'S INSURANCE COMPANY OF NEWARK, NEW JERSEY  
GREAT AMERICAN INSURANCE CORPORATION  
HARTFORD FIRE INSURANCE COMPANY  
HARTFORD STEAM BOILER INSPECTION AND INSURANCE COMPANY  
INDUSTRIAL RISK INSURERS  
INGERSOLL-RAND COMPANY  
MOTORS INSURANCE CORPORATION  
SUMITOMO MARINE AND FIRE INSURANCE COMPANY, LTD  
THE CONTINENTAL INSURANCE COMPANY  
THE FIDELITY AND CASUALTY COMPANY OF NEW YORK  
THE GLENS FALLS INSURANCE COMPANY  
TOKIO MARINE AND FIRE INSURANCE COMPANY, LTD  
YASUDA FIRE & MARINE INSURANCE COMPANY OF AMERICA

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

DATE: Friday, April 24, 2009

KAY , EDWARD M.

ZURICH AMERICAN INSURANCE COMPANY  
ALLIANZ INSURANCE COMPANY  
CIGNA PROPERTY AND CASUALTY INSURANCE COMPANY  
FIREMAN'S FUND INSURANCE COMPANY  
FIREMEN'S INSURANCE COMPANY OF NEWARK, NEW JERSEY  
GREAT AMERICAN INSURANCE CORPORATION  
HARTFORD FIRE INSURANCE COMPANY  
HARTFORD STEAM BOILER INSPECTION AND INSURANCE COMPANY  
INDUSTRIAL RISK INSURERS  
INGERSOLL-RAND COMPANY  
MOTORS INSURANCE CORPORATION  
SUMITOMO MARINE AND FIRE INSURANCE COMPANY, LTD  
THE CONTINENTAL INSURANCE COMPANY  
THE FIDELITY AND CASUALTY COMPANY OF NEW YORK  
THE GLENS FALLS INSURANCE COMPANY  
TOKIO MARINE AND FIRE INSURANCE COMPANY, LTD  
YASUDA FIRE & MARINE INSURANCE COMPANY OF AMERICA  
ZURICH AMERICAN INSURANCE COMPANY

ROBERTS , RICHARD C

ALLIANZ INSURANCE COMPANY  
CIGNA PROPERTY AND CASUALTY INSURANCE COMPANY  
FIREMAN'S FUND INSURANCE COMPANY  
FIREMEN'S INSURANCE COMPANY OF NEWARK, NEW JERSEY  
GREAT AMERICAN INSURANCE CORPORATION  
HARTFORD FIRE INSURANCE COMPANY  
HARTFORD STEAM BOILER INSPECTION AND INSURANCE COMPANY  
INDUSTRIAL RISK INSURERS  
INGERSOLL-RAND COMPANY  
MOTORS INSURANCE CORPORATION  
SUMITOMO MARINE AND FIRE INSURANCE COMPANY, LTD  
THE CONTINENTAL INSURANCE COMPANY  
THE FIDELITY AND CASUALTY COMPANY OF NEW YORK  
THE GLENS FALLS INSURANCE COMPANY  
TOKIO MARINE AND FIRE INSURANCE COMPANY, LTD  
YASUDA FIRE & MARINE INSURANCE COMPANY OF AMERICA  
ZURICH AMERICAN INSURANCE COMPANY

Appellee Atty:

Appellee Name:

.....  
TATE , JOHN L.

.....  
GIDDINGS & LEWIS, INC.  
UNITED DOMINION INDUSTRIES, A DELAWARE CORP.  
UNITED DOMINION INDUSTRIES, INC.  
UNITED DOMINION INDUSTRIES, INC., A DELAWARE CORP.  
UNITED DOMINION INDUSTRIES, INC., A DELAWARE CORP.

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

DATE: Friday, April 24, 2009

THOMAS , JASON PATRICK

GIDDINGS & LEWIS, INC.

UNITED DOMINION INDUSTRIES, A DELAWARE CORP.

UNITED DOMINION INDUSTRIES, INC.

UNITED DOMINION INDUSTRIES, INC., A DELAWARE CORP.

UNITED DOMINION INDUSTRIES, INC., A DELAWARE CORP.

LOCATION: JEFFERSON COUNTY JUDICIAL CENTER, 10TH FLOOR APPELLATE COURTROOM, 700 WEST JEFFERSON STREET, LOUISVILLE,

DATE: Monday, April 27, 2009

3:30 PM

PJ: MOORE

DIXON

KNOPF

2007CA002243

FAYETTE COUNTY BOARD OF EDUCATION VS CAROL MANER ET AL.

2007CA002395

42 USC 1983 action resulting in plaintiff's verdict; on direct appeal, appellant contends (1) trial court erred in determining that statute of limitations was tolled; appellee Maner failed to produce sufficient evidence to meet the standards under section 1983 and Title IX; and Bd of Ed is immune from section 1983 and Title X claims as arm of the State under sovereign immunity. Cross appeal contends trial ct erred in granting Appellant's CR 59.05 motion to strike award of post-judgment interest.

CIVIL

FAYETTE COUNTY

THOMAS L CLARK

Appellant Atty:

Appellant Name:

.....  
BARKER , STEPHEN L

.....  
FAYETTE COUNTY BOARD OF EDUCATION

BEAUMAN , BRYAN H.

FAYETTE COUNTY BOARD OF EDUCATION

DEENER , LARRY C

FAYETTE COUNTY BOARD OF EDUCATION

DEENER , ELIZABETH ANNA

FAYETTE COUNTY BOARD OF EDUCATION

Appellee Atty:

Appellee Name:

.....  
ARNOLD , CHARLES W

.....  
CAROL LYNNE MANER

CHARLES W. ARNOLD

CHARLES W. ARNOLD, P.L.C.

MILLER , CHRISTOPHER D.

CAROL LYNNE MANER

CHRISTOPHER M. MILLER

RAMBICURE AND MILLER, P.S.C.

RAMBICURE , WILLIAM C.

WILLIAM C. RAMBICURE

CAROL LYNNE MANER

CHRISTOPHER M. MILLER

RAMBICURE AND MILLER, P.S.C.

WILLIAM C. RAMBICURE

\*\*NOTE:PREVIOUSLY 3:30 PM

LOCATION: JEFFERSON COUNTY JUDICIAL CENTER, 10TH FLOOR APPELLATE COURTROOM, 700 WEST JEFFERSON STREET, LOUISVILLE,

DATE: Tuesday, April 28, 2009

---

9:00 AM PJ: MOORE DIXON KNOFF  
2007CA002035 DAVID KAREM VS THE BOARD OF TRUSTEES OF THE JUDICIAL FORM RETIREMENT SYSTEM

Legislator's Retirement Benefit Calculation case regarding whether the Board of Trustees correctly applied KRS 6.525.

CIVIL FRANKLIN COUNTY THOMAS D. WINGATE

Appellant Atty:

Appellant Name:

.....  
CETRULO , DON

.....  
DAVID K. KAREM

Appellee Atty:

Appellee Name:

.....  
GILBERT , JAMES T.

.....  
THE BOARD OF TRUSTEES OF THE JUDICIAL FORM RETIREMENT SYSTEM

---

9:45 AM PJ: KNOFF DIXON MOORE  
2008CA001141 CONCERNED CITIZENS FOR HENRY COUNTY GOVERNMENT, LLC. ET AL. VS HENRY COUNTY, KENTUCKY ET AL.

Appeal from an order of the Henry Circuit Court granting summary judgment. Primary issue involves legality of Henry County's mandatory garbage collection ordinance and use of franchise fees.

CIVIL HENRY COUNTY KAREN A. CONRAD

Appellant Atty:

Appellant Name:

.....  
STURM , WILLIAM P.

.....  
CONCERNED CITIZENS FOR HENRY COUNTY GOVERNMENT, LLC.  
GEORGE WEBSTER  
HUGH MCBURNEY  
SANDY ALLISON

Appellee Atty:

Appellee Name:

.....  
GADANSKY , CHRISTOPHER

.....  
FISCAL COURT OF HENRY COUNTY, KENTUCKY  
HENRY COUNTY, KENTUCKY  
JOHN LOGAN BRENT  
FISCAL COURT OF HENRY COUNTY, KENTUCKY  
HENRY COUNTY, KENTUCKY  
JOHN LOGAN BRENT  
FISCAL COURT OF HENRY COUNTY, KENTUCKY  
HENRY COUNTY, KENTUCKY  
JOHN LOGAN BRENT  
RUMPKE OF KENTUCKY, INC.

HARROD , VIRGINIA

WATSON , ROBERT THOMAS

ZARING , ALAN Q.