

12/02/2008

**DECEMBER 2008**

**ORAL ARGUMENT**

**CALENDAR**

12/02/2008

DECEMBER, 2008

LOCATION OF COURT MEETING AND MOTION PANEL: JEFFERSON COUNTY  
JUDICIAL CENTER, LOUISVILLE, KY

December 12, 2008

9:00 A.M. MOTION PANEL, JUDGE LAMBERT, PJ,  
JUDGE NICKELL AND JUDGE THOMPSON

10:00 -10:50 A.M. ORAL ARGUMENT, INTERACTIVE  
MEDIA ENTERTAINMENT AND GAMING  
ASSOCIATION, INC. V. THOMAS WINGATE, ET AL. ,  
2008-CA-002000, 2008-CA-002019, 2008-CA-002036,  
JUDGE KELLER, PRESIDING JUDGE,  
JUDGE CAPERTON AND JUDGE TAYLOR, ASSOC.

11:00 A.M. COURT MEETING

1:30 – 2:00 P.M. ORAL ARGUMENT,  
HINTON HARDWOODS, INC. V. CUMBERLAND SCRAP  
PROCESSORS TRANSPORT, LLC, 2008-CA-000362,  
JUDGE CLAYTON, PRESIDING JUDGE,  
JUDGE LAMBERT, AND JUDGE WINE, ASSOC.

2:15 – 2:45 P.M. ORAL ARGUMENT, AIRTRAN  
AIRWAYS V. SARAH FORTNEY, ET AL., 2008-CA-001223,  
JUDGE CLAYTON, PRESIDING JUDGE,  
JUDGE LAMBERT AND JUDGE WINE, ASSOC.

3:00 – 3:30 P.M. ORAL ARGUMENT, FINANCE AND  
ADMINISTRATION CABINET, DEPT. OF REVENUE V.  
ROHM AND HAAS COMPANY, ET AL., 2008-CA-000022,  
JUDGE ACREE, PRESIDING JUDGE, JUDGE CLAYTON  
AND JUDGE KELLER, ASSOC.

3:45 – 4:15 P.M. ORAL ARGUMENT, K.B. V. CABINET  
FOR HEALTH AND FAMILY SERVICES,  
COMMONWEALTH OF KENTUCKY, 2008-CA-001156,  
JUDGE ACREE, PRESIDING JUDGE, JUDGE NICKELL  
AND SENIOR JUDGE KNOPF, ASSOC.

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

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

**LOUISVILLE – Contact Linda Fox – (502) 595-3430**

**SHEPHERDSVILLE – Contact Layne Abell – (502) 543-7104**

LOCATION: JEFFERSON COUNTY JUDICIAL CENTER, 10TH FLOOR APPELLATE COURTROOM, 700 WEST JEFFERSON STREET, LOUISVILLE,  
DATE: Thursday, December 11, 2008

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11:45 AM PJ: STUMBO THOMPSON GUIDUGLI  
2007CA002008 OLSHAN FOUNDATION REPAIR AND WATERPROOFING VS JODI OTTO ET AL.

Appeal from order denying motion to compel arbitration between third party beneficiary of contract and Appellant. Issues include appealability of order denying arbitration, and estoppel.

CIVIL CAMPBELL COUNTY JULIE REINHARDT WARD

Appellant Atty:

Appellant Name:

.....  
CORTHELL , RICHARD P  
MCDOWELL , CHRISTOPHER

.....  
OLSHAN FOUNDATION REPAIR AND WATERPROOFING  
OLSHAN FOUNDATION REPAIR AND WATERPROOFING

Appellee Atty:

Appellee Name:

.....  
BLAU , ROBERT E.

.....  
FRED OTTO  
JODI OTTO

---

1:15 PM PJ: GUIDUGLI STUMBO THOMPSON  
2008CA000181 WANDA COMBS VS COMMONWEALTH OF KENTUCKY

Criminal case. Appellant contends court erred in amending indictment on day of trial and then gave both principle and complicity instructions.

CRIMINAL BREATHITT COUNTY FRANK ALLEN FLETCHER

Appellant Atty:

Appellant Name:

.....  
ANDERSON , JERRY

.....  
WANDA COMBS

Appellee Atty:

Appellee Name:

.....  
SHACKELFORD , JAMES C

.....  
COMMONWEALTH OF KENTUCKY

\*\*NOTE:PREVIOUSLY 3:30 PM

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

DATE: Thursday, December 11, 2008

2:00 PM

PJ: THOMPSON

STUMBO

GUIDUGLI

2007CA002103

R. T. VANDERBILT COMPANY, INC. VS JOHNNY FRANKLIN ET AL.

Appellant allegedly provided asbestos containing talc for use in the manufacture of ceramic tiles. Appellee was a tile sorter and has mesothelioma. Appellant argues that appellee's claims were time barred by the statute of limitations and other errors including jury instructions.

CIVIL

ANDERSON COUNTY

REBECCA M OVERSTREET

Appellant Atty:

Appellant Name:

.....  
AMATO , STEPHEN G.

.....  
R. T. VANDERBILT COMPANY, INC.

BREETZ , BETHANY A

R. T. VANDERBILT COMPANY, INC.

BREETZ , MATTHEW W.

R. T. VANDERBILT COMPANY, INC.

RISLEY , MICHAEL D.

R. T. VANDERBILT COMPANY, INC.

Appellee Atty:

Appellee Name:

.....  
SALES , KENNETH L.

.....  
JOHNNY FRANKLIN

JOHNNY FRANKLIN

SATTERLEY , JOSEPH D.

JOHNNY FRANKLIN

JOHNNY FRANKLIN

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

DATE: Thursday, December 11, 2008

2:45 PM

PJ: GUIDUGLI

STUMBO

THOMPSON

2007CA002355

CAROLYN STRATTON ET AL. VS BOBBY HENSON ET AL.

Trial court granted appellees' motion for declaratory judgment and divided property as appellees requested. Issues are interpretation of will and application of rules of construction concerning language in will.

CIVIL

LINCOLN COUNTY

DAVID A. TAPP

Appellant Atty:

Appellant Name:

.....  
LYONS JR., J. ROBERT

.....  
CAROLYN STRATTON  
FRANCES HENSON  
HANNAH CAMPBELL  
HAROLD E. HENSON  
HENRY HENSON  
JACKIE HENSON  
JACQUILINE HENSON  
JAMES D. CAUDILL  
JOANN CAUDILL  
KENNETH STRATTON

Appellee Atty:

Appellee Name:

.....  
RALSTON , JEFFREY C

.....  
BEN HENSON  
BILLY HENSON  
BOBBY STEELE HENSON  
JOHNNY MACK HENSON  
LARRY MAPLES  
MARK HENSON  
NANCY FLETCHER HENSON  
REGINA A. HENSON  
TAMMY MAPLES  
WANDA HENSON  
WILMA HENSON

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

DATE: Friday, December 12, 2008

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10:00 AM PJ: KELLER CAPERTON TAYLOR  
2008CA002000 INTERACTIVE MEDIA ENTERTAINMENT AND GAMING ASSOCIATION, INC.  
VS THOMAS WINGATE ET AL.

2008CA002019;  
2008CA002036

WRIT OF MANDAMUS COUNTY

Appellant Atty:

.....  
ADAMS , JAMES LEE  
FLEISCHAKER , JON L.  
MEYER , R. KENYON

Appellant Name:

.....  
INTERACTIVE MEDIA ENTERTAINMENT AND GAMING ASSOCIATION, INC.  
INTERACTIVE MEDIA ENTERTAINMENT AND GAMING ASSOCIATION, INC.  
INTERACTIVE MEDIA ENTERTAINMENT AND GAMING ASSOCIATION, INC.

Appellee Atty:

.....  
HURT JR, WILLIAM C.  
LANG , LISA KATHLEEN  
LYCAN , D ERIC  
MAY III, WILLIAM H  
THOMAS , TAD  
WINGATE , THOMAS D

Appellee Name:

.....  
COMMONWEALTH OF KENTUCKY, EX REL. J. MICHAEL BROWN  
JACK CONWAY  
COMMONWEALTH OF KENTUCKY, EX REL. J. MICHAEL BROWN  
COMMONWEALTH OF KENTUCKY, EX REL. J. MICHAEL BROWN  
JACK CONWAY  
THOMAS WINGATE

**\*\*NOTE:50 MINUTE ORAL**

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1:30 PM PJ: CLAYTON LAMBERT, (JAMES) WINE  
2008CA000362 HINTON HARDWOODS, INC. VS CUMBERLAND SCRAP PROCESSORS  
TRANSPORT, LLC ET AL.

Appeal of summary judgment granted to appellees on breach of contract for purchase of real estate. Issues also include specific performance, promissory estoppel and fraudulent misrepresentation. Motion to strike appellees brief pending.

CIVIL LOGAN COUNTY TYLER L GILL

Appellant Atty:

.....  
BAKER , MATTHEW J.

Appellant Name:

.....  
HINTON HARDWOODS, INC.

Appellee Atty:

.....  
CHAUDOIN , ROBERT C  
  
ENGLISH JR., CHARLES E.

Appellee Name:

.....  
JAMES MICHAEL RILEY  
RILEY-BURCHETT REALTY AND AUCTION, INC.  
CUMBERLAND SCRAP PROCESSORS TRANSPORT, LLC  
CUMBERLAND SCRAP PROCESSORS TRANSPORT, LLC  
OMNISOURCE CORPORATION  
JAMES MICHAEL RILEY  
RILEY-BURCHETT REALTY AND AUCTION, INC.

RILEY , JESSE L

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

DATE: Friday, December 12, 2008

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2:15 PM PJ: CLAYTON LAMBERT, (JAMES) WINE

2008CA001223 AIRTRAN AIRWAYS, INC. VS SARAH FORTNEY ET AL.

Employer of deceased airline pilot appeals a Workers' Compensation Board's decision ruling his death compensable.

WORKERS COMP WORKERS' COMP COUNTY NA NA

Appellant Atty:

Appellant Name:

.....  
ELLISON , MATTHEW DAVID  
FEAMSTER , ELIZABETH S.

.....  
AIRTRAN AIRWAYS, INC.  
AIRTRAN AIRWAYS, INC.

Appellee Atty:

Appellee Name:

.....  
LOVAN , DWIGHT T  
MILLER , SCOTT M

.....  
WORKERS' COMPENSATION BOARD  
SARAH FORTNEY  
SARAH FORTNEY  
JOHN W. THACKER

THACKER , JOHN WALLACE

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3:00 PM PJ: ACREE CLAYTON KELLER

2008CA000022 FINANCE AND ADMINISTRATION CABINET, DEPT. OF REVENUE VS ROHM AND HAAS COMPANY ET AL.

Civil; Taxation: Did Franklin Circuit Court err in overturning the Bd. Of Tax Appeals determination of the Appellee's sales tax liability?

CIVIL FRANKLIN COUNTY THOMAS D. WINGATE

Appellant Atty:

Appellant Name:

.....  
SAUNDERS , LESLIE M

.....  
FINANCE AND ADMINISTRATION CABINET, DEPT. OF REVENUE

Appellee Atty:

Appellee Name:

.....  
ARDERY , JOSEPH L

.....  
ROHM AND HAAS COMPANY  
ROHM AND HAAS COMPANY KENTUCKY, INC.

\*\*NOTE:ORIGINALLY ON 11/13/08 AT 11:00 AM IN COVINGTON, KY

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

DATE: Friday, December 12, 2008

3:45 PM

PJ: ACREE

NICKELL

KNOPF

2008CA001156

K. B. VS CABINET FOR HEALTH AND FAMILY SERVICES ET AL.

Civil; Family Law: Whether Trial Judge's finding that the Appellant's parental rights to her children should be terminated are clearly erroneous.

BULLITT COUNTY

ELISE GIVHAN SPAINHOUR

Appellant Atty:

Appellant Name:

.....  
SUTTON , DEAN HAROLD

.....  
K. B.

Appellee Atty:

Appellee Name:

.....  
GUNTHER , BARBARA M  
ROBINSON , MONICA M  
SPALDING , AMANDA MARIE

.....  
CABINET FOR HEALTH AND FAMILY SERVICES  
CABINET FOR HEALTH AND FAMILY SERVICES  
A. N. B.  
B, T, B, II  
B. M. B.  
K. N. J. B,



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

DATE: Wednesday, December 17, 2008

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11:00 AM

PJ: WINE

CAPERTON

TAYLOR

2008CA000169

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY VS CARLENE  
SLUSHER

State Farm appeals a judgment entered against it for uninsured motor vehicle coverage benefits. State Farm argues that it should not provide uninsured motorist benefit coverage to an estate as a result of the exclusive remedy under the KY workers' compensation statutes. Also, State Farm argues there is no coverage available under the policy for underinsured coverage.

CIVIL

KNOX COUNTY

RODERICK MESSER

Appellant Atty:

Appellant Name:

.....  
VINCENT , JOHN

.....  
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

Appellee Atty:

Appellee Name:

.....  
DAVIES , SAMUEL GIRDNER

.....  
CARLENE SLUSHER

\*\*NOTE:PREVIOUSLY 11/19/08 IN WINCHESTER, KY AT 10:45 AM

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

DATE: Wednesday, December 17, 2008

1:30 PM

PJ: MOORE

TAYLOR

VANMETER

2008CA000377

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT ET AL. VS METRO  
LOUISVILLE HOSPITALITY COALITION, INC. ET AL.

Appellants seek review of trial court's judgment ruling that the smoking ban ordinance enacted by Louisville/Jefferson County Metro Government is unconstitutional based on an exemption for facilities licensed and regulated by the Kentucky Horse Racing Authority and whether the trial court erred in holding the exemption was not severable from the remainder of the ordinance.

CIVIL

JEFFERSON COUNTY

STEPHEN P RYAN

Appellant Atty:

Appellant Name:

.....  
LILLY , N SCOTT

.....  
JERRY E. ABRAMSON  
LOUISVILLE METRO COUNCIL  
LOUISVILLE METRO HEALTH DEPARTMENT  
LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT

MULVIHILL , EAMON PATRICK

JERRY E. ABRAMSON  
LOUISVILLE METRO COUNCIL  
LOUISVILLE METRO HEALTH DEPARTMENT  
LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT

O'BRIEN , WILLIAM P.

JERRY E. ABRAMSON  
LOUISVILLE METRO COUNCIL  
LOUISVILLE METRO HEALTH DEPARTMENT  
LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT

SEXTON , DAVID A

JERRY E. ABRAMSON  
LOUISVILLE METRO COUNCIL  
LOUISVILLE METRO HEALTH DEPARTMENT  
LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT

Appellee Atty:

Appellee Name:

.....  
HATZELL , C MICHAEL  
WILSON , JOHN R

.....  
METRO LOUISVILLE HOSPITALITY COALITION, INC.  
GREENWOOD ROLLERDROME, INC.  
HIGHVIEW MANOR ASSOCIATES, LLC  
KENTUCKY CHARITABLE GAMING ASSOCIATION  
LORENA, INC.  
NATIONAL LEASING, INC.  
R. H. CONSTRUCTION, INC.  
SUNSHINE BINGO CENTER, LLC  
GREENWOOD ROLLERDROME, INC.  
HIGHVIEW MANOR ASSOCIATES, LLC  
KENTUCKY CHARITABLE GAMING ASSOCIATION  
LORENA, INC.  
NATIONAL LEASING, INC.  
R. H. CONSTRUCTION, INC.  
SUNSHINE BINGO CENTER, LLC

WILSON , MICHAEL ROLLIN

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

DATE: Wednesday, December 17, 2008

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2:15 PM

PJ: MOORE

TAYLOR

VANMETER

2007CA002066

JESSE GARON VS LOUISVILLE AND JEFFERSON COUNTY HUMAN  
RELATIONS COMMISSION ET AL.

Whether Louisville and Jefferson County Human Relations Commission has the authority to settle a matter without the  
consent of the complaining witness.

CIVIL

JEFFERSON COUNTY

JUDITH E MCDONALD-BUR

Appellant Atty:

Appellant Name:

.....  
COLEMAN , ELIZABETH A.

.....  
JESSE GARON

Appellee Atty:

Appellee Name:

.....  
DOBBINS , MARK W  
MAZZOLI , MICHAEL R.

.....  
LOUISVILLE AND JEFFERSON COUNTY HUMAN RELATIONS COMMISSION  
STEVEN REDMON

SKORA , JEFFREY B

STEVEN REDMON

WALSH IV, WILL J.

LOUISVILLE AND JEFFERSON COUNTY HUMAN RELATIONS COMMISSION

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3:00 PM

PJ: TAYLOR

MOORE

VANMETER

2008CA000344

LOIS JACKSON VS MICHAEL MACKIN

Whether circuit court properly granted appellee's motion to dismiss based on arbitration clause in contract.

CIVIL

JEFFERSON COUNTY

KATHLEEN VOOR MONTAN

Appellant Atty:

Appellant Name:

.....  
BOLUS JR., JAMES M.

.....  
LOIS JUNE JACKSON

Appellee Atty:

Appellee Name:

.....  
COHEN , GLENN ALAN  
EFFINGER , CYNTHIA L.

.....  
MICHAEL MACKIN  
MICHAEL MACKIN

\*\*NOTE:PREVIOUSLY 3:45 PM

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

DATE: Thursday, December 18, 2008

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1:30 PM PJ: KELLER COMBS HENRY  
2007CA002347 JONATHON MILLER VS GERALD MASSEY

This appeal is regarding a residential construction defect. The Appellant alleges that the circuit court incorrectly found an agreement between the Appellant and the Appellee which assigned responsibility for proper and workmanlike construction to a third party.

CIVIL PULASKI COUNTY JEFFREY T BURDETTE

Appellant Atty:

Appellant Name:

.....  
COHEN , DAVID A.  
MACLIN III, ROBERT E.

.....  
JONATHON MILLER  
JONATHON MILLER

Appellee Atty:

Appellee Name:

.....  
MANDT , JOHN T.

.....  
GERALD CLARK MASSEY

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2:15 PM PJ: KELLER COMBS HENRY  
2008CA000399 ROBIE MULLINS ET AL. VS JOHN FIELDS ET AL.

This is an appeal from summary judgment entered by the trial court finding that the alleged dangerous condition created by the Appellee was not the proximate cause of the injury sustained by the Appellant.

CIVIL LAWRENCE COUNTY JOHN DAVID PRESTON

Appellant Atty:

Appellant Name:

.....  
ROWE JR, ROBERT ALLEN

.....  
DANA MULLINS  
ROBIE WILLIAM MULLINS

Appellee Atty:

Appellee Name:

.....  
SEWELL , PETER J

.....  
D. G. EQUIPMENT MOVERS, LLC  
JOHN P. FIELDS

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3:00 PM PJ: HENRY COMBS KELLER  
2007CA002237 CORBETT SLAVEN VS COMMONWEALTH OF KENTUCKY

Criminal; wanton murder; Issues: whether trial court erred by denying evidentiary hearing; ineffective assistance of counsel; tainted evidence; prosecutorial misconduct; cumulative effect.

CRIMINAL PERRY COUNTY WILLIAM ENGLE III

Appellant Atty:

Appellant Name:

.....  
JOHNSON , DAVID ALAN

.....  
CORBETT CHARLES "CHUCK" SLAVEN

Appellee Atty:

Appellee Name:

.....  
MOORE , JASON D.

.....  
COMMONWEALTH OF KENTUCKY