

**SUPREME COURT OF KENTUCKY**

**DISCRETIONARY REVIEW GRANTED**  
(Pending Cases Only)

**DISCRETIONARY REVIEW GRANTED 6/17/09 AND  
CROSS-MOTION GRANTED 8/19/09**

Schnuerle v. Insight Communications Company, L.P.,  
2008-SC-789-DG and (Cross-Motion) Insight Communications Company,  
L.P. v. Schnuerle, 2009-SC-390-DG

Contracts. Arbitration. Issues include the validity of mandatory dispute resolution contract clauses barring consumer class actions.

Oral argument-October 2010 and February 2012

**DISCRETIONARY REVIEW GRANTED 8/18/10**

Barker v. Commonwealth, 2010-SC-116-DG

Probation Revocation. The issue is whether the trial court properly revoked the defendant's probation based on his arrest for another felony prior to any conviction for said felony.

Oral argument-May 2011

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT  
8/24/10**

D.G.R. and T.B.H. v. Commonwealth of Kentucky, Cabinet for Health and  
Family Services, 2010-SC-100-DGE

Termination of Parental Rights. Evidentiary Sufficiency. In a case in which the circuit court denied termination of parental rights, did clear and convincing evidence require the opposite result?

**DISCRETIONARY REVIEW GRANTED 9/15/10**

Commonwealth v. Jones, 2010-SC-123-DG

Criminal Law. Probation Revocation. Self Incrimination. Use Immunity. The issue is whether the trial court's failure to continue the probation revocation hearing until the Commonwealth obtained a conviction on the new substantive offense which was the basis for requesting revocation or alternatively grant the defendant "use immunity" unconstitutionally forced the defendant to choose between asserting his right against self incrimination and his right to present a meaningful and complete defense.

Oral argument-May 2011

**DISCRETIONARY REVIEW GRANTED 10/13/10**

State Farm Mutual Auto Insurance v. Baldwin, 2010-SC-144-DG

Uninsured Motorist Coverage. The issue is whether a tarp hitting a truck is a "strike" covered by the uninsured motorist policy.

Oral argument-August 2011

**DISCRETIONARY REVIEW GRANTED 11/10/10**

Benningfield v. Zinsmeister, 2009-SC-660-DG

Animal control. KRS 258.235(4). Issues include whether a landlord is strictly liable as a KRS 258.095(5) "owner" for injuries inflicted by a tenant's dog and, if so, whether the liability extends to injuries inflicted off the leased premises.

Oral argument-May 2011

**DISCRETIONARY REVIEW GRANTED 12/8/10**

Hashmi v. Kelly, 2009-SC-0843-DG

Medical Malpractice. Expert Witnesses. Witness Disclosure. Issues include the admissibility of expert witness testimony by the defendant where the plaintiff took expert's deposition but defendant failed to disclose his intent to utilize deposition as expert testimony.

Oral argument-October 2011

Singleton v. Commonwealth, 2010-SC-0078-DG

Criminal Law. Search and Seizure. Vehicle Checkpoint. Issues include the constitutionality of vehicle checkpoint established to check compliance with

city ordinance that required all residents of the city and all those working in the city to display a sticker on their vehicles.

Oral argument-November 2011

Garnett Gibson, etc., v. Fuel Transport, Inc., and Fuel Transport, Inc. v. Gibson, 2010-SC-72-DG & 2010-SC-682-DG

Negligence. Personal Injury. Damages. This case involves a collision between a car and a coal truck. The issues include: 1. Whether punitive damages are available; 2. Whether the damages awarded by the jury were excessive; 3. Whether juror misconduct warrants a new trial; 4. Whether the trial court gave erroneous jury instructions and the objections to these instructions were not waived; 5. Whether the trial court erred by failing to change venue; 6. Whether a party has waived the right to challenge errors related to compensatory damages, and 6. Whether the trial court erred by awarding post-judgment interest at 12%.

Oral argument-November 2011

### **DISCRETIONARY REVIEW GRANTED 1/14/11**

Bonar, et. al. v. Waite, Schneider, Bayless, & Chesley, et. al, 2010-SC-87-DG

Class Action Litigation. Attorneys' Fees. The issues include whether and to what extent a former class action co-counsel is entitled to recover fees following settlement of the class action lawsuit.

Oral argument-September 2011

Reynolds v. Safeco Insurance Company of Illinois, 2010-SC-665-DG

Uninsured Motorist Coverage. The issue is whether a naturally occurring condition, specifically a chunk of ice allegedly breaking off of a truck and smashing the insured's windshield, is a "hit" covered by the insured's motor vehicle insurance policy.

Oral argument-August 2011

### **DISCRETIONARY REVIEW GRANTED 3/16/11**

Kentucky Southern Coal Corporation v. Kentucky Energy and Environment Cabinet, 2010-SC-29-DG

Administrative Agency Law. Issues include whether the Cabinet acted arbitrarily in denying Kentucky Southern Coal Corporation's application to renew a mining permit for certain land.

Oral argument-February 2012

Carter v. Smith, 2010-SC-295-DG

Open Meetings. Exceptions. Personnel and Litigation. Issues involve the applicability of the personnel and litigation open meetings exceptions to a closed school board meeting considering potential resignation of a school superintendent as well as his potential subsequent retention on a 12-month consulting contract.

Oral argument-December 2011

Hancock v. Prestonsburg Industrial Corp., 2010-SC-376-DG

Charitable Organizations. Tax Exemptions. The issue is whether Prestonsburg Industrial Corporation ("PIC") is a charitable organization under Kentucky Constitution § 170 and thus exempt from ad valorem taxes.

Oral argument-October 2011

Daugherty, now Butcher v. Telek, 2011-SC-43-DGE

Emergency Protective Orders. Domestic Violence Orders. Time for Hearing. The issue is whether statutory time frames involve general subject matter jurisdiction, which cannot be waived, or are jurisdictional aspects of the particular case, which can be waived by a party.

Oral argument-October 2011

Commonwealth v. O'Connor, 2010-SC-343-DG

Criminal law. First-Degree Criminal Abuse. The issue is whether the Commonwealth presented sufficient evidence to support a verdict for intentional abuse where the defendant argued the acts toward the children were the result of poverty and poor parenting skills.

Oral argument-December 2011

Ky. Unemployment Insurance Commission v. Cecil, 2010-SC-349-DG

Unemployment Benefits. KRS 341.370(6). The issues are: 1. Whether the "willful and wanton" standard still applies to specific misconduct enumerated under KRS 341.370(6), and 2. Whether the Water Company's

instruction to Cecil to sign a “last chance” employment agreement was reasonable.

Oral argument-November 2011

### **DISCRETIONARY REVIEW GRANTED 4/13/11**

Stilger v. Flint, 2010-SC-120-DG

Immunity. Defamation. The issue is whether statements made in response to a request the Attorney General investigate a case are subject to an absolute or qualified privilege where a party alleges defamation.

Cox v. Commonwealth, 2010-SC-733-DG

Criminal Law. Ineffective Assistance of Counsel. The question presented is whether the ineffective assistance logic concerning deportation circumstances in Padilla v. Kentucky, 130 S.Ct. 1473 (2010) extends to alleged misadvice of guilty plea counsel as to the impact of the sex offender treatment program upon parole eligibility.

Oral argument-March 2012

Mortgage Electronic Registration Systems v. Roberts, 2010-SC-69-DG

Mortgages. Judgment Liens. Equitable Subrogation. Issues include the prioritization of liens in a foreclosure action.

Oral argument-December 2011

Wade v. Pomo Glass & Specialty Windows, 2010-SC-572-DG

Statute of Limitations. Judgments. Issues include how broadly to construe the word “execution” as used in KRS 413.090, the statute of limitations applicable to judgments.

Oral argument-November 2011

### **DISCRETIONARY REVIEW GRANTED 5/11/11**

Karem v. Bryant, 2010-SC-375 -DG

District Court Jurisdiction. Settlements. KRS 387.520(1). KRS 24A.120. Writ of Prohibition. Issues include interpretation of KRS 387.520(1) and KRS 24A.120 and the extent of the District Court's jurisdiction and authority regarding settlements in guardianship cases.

Wilson v. City of Central City, 2010-SC-394 -DG

"Whistleblower Act, KRS 61.102. Issues include whether municipalities and their employees are subject to the provisions of the Whistleblower Act.  
Oral argument-February 2012

Commonwealth v. Pridham, 2011-SC-126-DG

Criminal Law. Ineffective Assistance of Counsel. Issues include whether erroneous advice concerning parole eligibility may constitute ineffective assistance of counsel under *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010).  
Oral argument-March 2012.

Stiger v. Commonwealth, 2008-SC-864-DG

Criminal Law. Ineffective Assistance of Counsel. Issues include whether erroneous advice concerning parole eligibility may constitute ineffective assistance of counsel under *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010).

Bolton v. Irvin, 2010-SC-520-DG

Criminal Law. Bond. The issues are: 1. whether a district court may increase a defendant's bond following a finding of probable cause particularly where the defendant has remained in custody because he cannot afford the initial bond and 2. whether the district court must hold an adversarial hearing prior to changing the defendant's bond.  
Oral argument-February 2012

Osborne v. Keeney & Keeney v. Osborne, 2010-SC-397-DG & 2010-SC-430

Legal Malpractice. Emotional Distress. Damages. Issues include: 1. Whether a physical touching is still required for a Plaintiff to recover emotional distress damages; 2. Whether a Plaintiff may recover "lost punitive" damages in a legal malpractice claim; 3. Whether CR 8.01 limits the damages a Plaintiff may recover; 4. Whether and how a Plaintiff may file an Amended Complaint to include the Defendant's insurance company; 5. Must the trial court instruct the jury on and must the jury make findings on the "case-within-a-case;" 6. Did the trial court err by using "should have realized" language in the fraud instruction, and 7. Did the Court of Appeals, by affirming in part and reversing in part, create an unconstitutional ratio between compensatory and punitive damages such that the punitive award is now excessive?

Oral argument-December 2011

**DISCRETIONARY REVIEW GRANTED 3/16/11 and CROSS MOTION GRANTED 5/11/11**

Cunningham v. Whalen, 2010-SC-564-DG and 2011-SC-174-DG  
Open Meetings Act. Litigation Exception. Issues include whether the litigation exception to the Open Meeting Act's requirements applies where a zoning decision is the focus of the litigation.

Oral argument-May 2012

**DISCRETIONARY REVIEW GRANTED 6/8/11**

Guzman v. Commonwealth of Kentucky, 2010-SC-415 -DG  
Search and Seizure. Issue is the breadth of the "protective sweep" exception to the search warrant requirement.

Oral argument-April 2012

Ping, Executrix v. Beverly Enterprises, Inc., 2010-SC-558-DG  
Contracts. Arbitration. Issues involve the validity of an arbitration agreement signed pursuant to a general power of attorney for a relative contemporaneously with the relative's admission into a nursing home.

Oral argument-February 2012

**DISCRETIONARY REVIEW GRANTED 4/13/11 AND CROSS MOTION GRANTED 6/8/11**

Commonwealth v. Hasch, 2010-SC-494-DG & 2011-SC-232  
Criminal law. Self-defense. Jury Instructions. Immunity. The issues include: 1. whether the Commonwealth can introduce evidence of a defendant's opportunity to escape the victim in a self-defense case, thus permitting the court to instruct on lesser degrees of murder over the defendant's objection; 2. Whether the lower court erred by admitting the autopsy report as a Commonwealth exhibit; 3. Whether the lower court erred by excluding two defense witnesses; 4. Whether the jury instructions in the guilt and penalty phases were erroneous; and 5. Whether the lower court erred by failing to hold a probable cause hearing when Hasch sought immunity from prosecution under KRS 503.085.

Oral argument-March 2012.

## **DISCRETIONARY REVIEW GRANTED 8/17/11**

Meyers v. Commonwealth, 2010-SC-000515-DG

Marital evidentiary privilege. KRE 504(c)(2)(a). Issues include the breadth of coverage of the marital evidentiary privilege and the extent to which evidence from other charges may be introduced in trial of charges contained in the same indictment but severed for trial.

Norton Hospitals, Inc. v. Peyton, 2010-SC-818-DG **and** Neonatal Intensive Care Experts II, PLLC v. Peyton, 2010-SC-819-DG

Statutory Immunity. Negligence. The primary issue is whether a hospital and its employees have statutory immunity under KRS 620.030 and 620.050 where a mother's blood alcohol level may have been misreported to Child Protective Services.

Oral argument-April 2012

Miller v. Commonwealth, 2011-SC-30-DG

Criminal law. Probation Revocation. Sex Offender Treatment Program. Impossibility. The issue is the appropriate remedy where the trial court ordered the defendant to two years probation and probation and parole ordered the defendant to complete the Sex Offender Treatment Program; however, due to the length of the program, the defendant cannot complete the program prior to the expiration of his probation.

Bidwell v. Shelter Mutual Insurance Company, 2010-SC-560-DG

Insurance. Motor Vehicle. Permissive User Coverage. Issues involve the enforceability of a 90% "step-down" policy provision purportedly limiting recovery to the statutory minimum despite a \$250,000 per person policy liability limit.

Oral argument-March 2012.

Tucker v. Women's Care Physicians of Louisville, P.S.C., 2010-SC-466-DG

Medical malpractice. Evidence. Issue is whether the trial court abused its discretion in excluding certain expert testimony as irrelevant.

Oral argument-March 2012.

Commonwealth v. Kentucky Retirement Systems, 2010-SC-809-DG

Sovereign Immunity. Declaratory Judgment. State Employee Retirement Benefits. The issue is whether the Commonwealth can invoke sovereign immunity in any declaratory judgment action.

Oral argument-March 2012.

**DISCRETIONARY REVIEW GRANTED 9/14/11**

Commonwealth v. Reed, 2011-SC-111-DG

Criminal law. Guilty plea. Sentencing. Fines. KRS 534.030. Issues include whether in the case of an unenforceable bargained-for plea agreement an appellate court may vacate part of the sentence or whether the entire judgment and sentence of conviction must be set aside.

Oral argument-March 2012.

National Union Fire Insurance Co. v. Pike County Board of Education, 2010-SC-827-DG

Insurance. The issues involve interpretation of policy provisions regarding the effect of the delayed reporting of a claim under "claims based" policies with discrete coverage periods but when viewed together provide continuous coverage to the insured.

Oral argument-May 2012

**DISCRETIONARY REVIEW GRANTED 6/8/11 and CROSS MOTION GRANTED 9/14/11**

Savage v. Three Rivers Medical Center, 2010-SC-478-DG and (Cross Motion) Three Rivers Medical Center v. Savage, 2011-SC-348-DG

Torts. Medical Malpractice. Issues include whether the evidence sufficed to create a jury question relating to a surgical sponge left in a patient's abdomen when the patient had undergone multiple previous surgeries in that area of the body.

Oral argument-May 2012

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT 9/14/11**

Acosta v. Commonwealth, 2011-SC-097-DG

Criminal law. Criminal abuse. Burden of proof. KRS 508.100. Issues include sufficiency of the evidence to support a guilty verdict under KRS 508.100.

**DISCRETIONARY REVIEW GRANTED 3/16/11 and CROSS MOTION GRANTED 10/19/11**

Commonwealth v. Steadman, 2010-SC-326-DG and (Cross Motion) Steadman v. Commonwealth, 2011-SC-508-DG

Criminal Law. Restitution. Jurisdiction. The questions presented include whether a defendant can consent to a delay in a restitution hearing and disposition beyond ten days after entry of final judgment.

**DISCRETIONARY REVIEW GRANTED 10/19/11**

Abel v. Austin, 2010-SC-426-DG

Legal Malpractice. Statute of Limitations. Choice of Laws. Summary Judgment. This case involves alleged malpractice by attorneys involved in Fen-Phen litigation. The issues include whether the Alabama or Kentucky statute of limitations applies; whether the claims are legal malpractice or fraud, and whether the trial court properly granted summary judgment against all Plaintiffs.

Oral argument-April 2012

Lofton v. Fairmont Specialty Ins. Managers, Inc., 2010-SC-749-DG  
Attorney's Fees. At issue is attorney's entitlement to a fee under quantum meruit after withdrawing from a representation that involved a contingent fee contract.

Oral argument-April 2012

**DISCRETIONARY REVIEW GRANTED 11/16/11**

Frazier v. Commonwealth, 2011-SC-283-DG

Criminal Law. Search and Seizure. Issues include the proper scope and application of *Terry v. Ohio* and *Arizona v. Gant*.

Edwards v. Harrod, 2010-SC-770-DG

Juvenile. Youthful Offenders. Violent Offender Statute. The question presented is whether Violent Offender Statute KRS 439.3401 applies to a

“youthful offender” upon probation revocation so as to bar the requirement of serving 85% of a sentence prior to parole consideration.

Hale v. Commonwealth, 2011-SC-115-DG

Criminal Law. Sex Offenses. Unlawful Transaction with a Minor. The issues include whether a defendant who commits a sex offense with a minor can be convicted of Unlawful Transaction with a Minor rather than the substantive sexual offense. The Court is invited to re-visit its ruling in Young v. Commonwealth, 968 S.W.2d 670 (Ky. 1998).

Newton v. University of Louisville, 2010-SC-782-DG

Sovereign Immunity. Breach of Contract. The issues include what type of contract, if any, U of L’s personnel policies and employee handbook create between U of L and its employees. And, if these documents create a contract, is that contract sufficient under KRS 45A.245 so as to waive U of L’s right to sovereign immunity.

Oral argument-May 2012

Furtula v. University of Kentucky, 2011-SC-332-DG

Sovereign Immunity. Breach of Contract. The issues include what type of contract, if any, UK’s personnel policies and employee handbook create between UK and its employees. And, if these documents create a contract, is that contract sufficient under KRS 45A.245 so as to waive UK’s right to sovereign immunity.

Oral argument-May 2012

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT  
11/16/11**

Department of Revenue v. Cox Interior, Inc., 2010-SC-794-DG

Taxation. At issue is whether the erroneous portion of an ad valorem tax assessment on tangible personal property may be refunded although the taxpayer failed to protest the assessment before paying it.

**DISCRETIONARY REVIEW GRANTED 9/14/11 and CROSS MOTION  
GRANTED 11/16/11**

Ballard v. 1400 Willow Council of Co-Owners, Inc., 2010-SC-533-DG and (Cross Motion) 1400 Willow Council of Co-Owners, Inc. v. Ballard, 2011-SC-584-DG

Torts. Slander of Title and Negligence. Issues involve the timeliness of the slander of title claim and the extent of duty owed by a condominium council with regard to an owner's alleged responsibility to replace a multi-story bay window structure.

### **DISCRETIONARY REVIEW GRANTED 12/14/11**

Department of Revenue v. Wade, 2011-SC-95-DG

Employment Law. Termination. The issue is whether a state employee who requested a pre-termination hearing after receiving notice of termination waives said hearing by repeatedly engaging in conduct that delays the hearing.

Roach v. Commonwealth, 2011-SC-141-DG

Criminal Law. RCr 11.42. Time for Filing. The issue is whether appointed post conviction counsel must file their supplement to the defendant's original *pro se* pleading within three years after the judgment becomes final.

Dick's Sporting Goods, Inc. v. Webb, 2011-SC-518-DG and Shelton v. Kentucky Easter Seals Society, Inc., 2011-SC-554-DG)

Torts. Open and Obvious Doctrine. At issue is whether summary judgment for the defendant was granted properly under *Kentucky River Medical Center v. McIntosh*, 319 S.W.3d 385 (Ky. 2010).

Abbott v. Chesley, 2011-SC-291-DG

Torts. Fen-Phen Litigation. Issues include whether plaintiffs were entitled to summary judgment regarding alleged breaches of attorneys' fiduciary duty.

Gingerich v. Commonwealth, 2011-SC-379-DGE and Zook v. Commonwealth, 2011-SC-380-DGE

Criminal Law. State Constitutional Law. In cases involving failure to display a KRS 189.820 "slow moving vehicle" emblem on Old Order Swartzentruber horse-drawn buggies, issues involve whether KY. CONST.

§§ 1 & 5 provide greater religious protection than does the First Amendment to the United States Constitution.

Oral argument-March 2012.

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT**  
**12/14/11**

Commonwealth v. Abnee, 2011-SC-507-DG

Criminal Law. Jury Deliberations. The question is whether a defendant is entitled to examine jurors in seeking a new trial grounded upon a juror's letter, unsupported by affidavit, regarding alleged impropriety in deliberations.

**DISCRETIONARY REVIEW GRANTED 2/15/12**

Webb v. Meyer, 2011-SC-145-DG

School Law. The issue involves the definition of a "reduction in force" as used in KRS 161.011(8).

N.C. v. Commonwealth, 2011-SC-271-DG

Juvenile Law. Custody. Miranda. The issue is whether a juvenile's incriminating statements are admissible where the school's assistant principal questioned the juvenile about criminal conduct in the presence of a school resource officer, who was also a deputy sheriff, without giving the juvenile Miranda warnings or telling the juvenile he was free to leave the office, refuse to answer questions, or free to call his legal guardian.

Jarvis v. National City, 2011-SC-135-DG

Testamentary Trusts. Trustee Fees. Retroactivity. The issue is whether the 2008 repeal of KRS 386.180 applies to testamentary trusts which were created prior to 2008.

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT**  
**2/15/12**

Commonwealth v. Morseman, 2011-SC-167-DG

Criminal Law. Restitution. Fraudulent Insurance Acts. The issue is whether a trial court may order a defendant to pay restitution in an amount greater

than the amount of actual loss incurred from the defendant's illegal conduct for which he was convicted.

Browning v. Preece, 2011-SC-459-DG

Appellate Procedure. Indispensable Parties. In this dispute over the width and measurement of an easement across the property of neighboring landowners, the question is whether defendant landowners were indispensable parties on an appeal by the neighboring defendant landowner.

### **DISCRETIONARY REVIEW GRANTED 3/14/2012**

Ft. Mitchell Country Club v. LaMarre, 2011-SC-665-DG

Torts. Dram Shop Act. Issues include: whether statutory violations other than the sale of alcohol to a minor deprive a dram shop of the Act's protection; and whether intent to hold intoxicated tortfeasors primarily liable and licensed alcohol sellers only secondarily liable survives Taylor v. King, 345 S.W.3d 237(Ky. App. 2010).

Commonwealth v. Hawkins, 2011-SC-159-DG

Criminal Law. Search and Seizure. Emergency Aid Exception. Issues include the breadth of the "emergency aid" exception to the search warrant requirement.

Walker v. Blair, 2012-SC-4-DGE

Grandparent Visitation. Issues involve evidentiary sufficiency and application of cases including *Troxel v. Granville*, 530 U.S. 57 (2000) and *Vibbert v. Vibbert*, 144 S.W.3d 292 (Ky. App. 2004).

### **DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT 3/14/2012**

Commonwealth v. Martin, 2011-SC-616-DG

Criminal Law. Self-Representation. Issues include whether defendant's *pro-se* motions and the rulings thereon constituted an unequivocal request for self-representation that required a Faretta hearing.

Taylor v. Kentucky Unemployment Insurance Commission,  
2011-SC-346-DG

Unemployment Benefits. Procedure. The issue is whether the Court should permit a party to file an Amended Complaint in order to satisfy the verification requirement in KRS 341.450.





