

UPDATED: 11/10/2009

**NOVEMBER 2009**

**ORAL ARGUMENT**

**CALENDAR**

**Dated 11/10/2009**

**NOVEMBER, 2009**

**THERE WILL BE NO COURT MEETING.**

**November 10, 2009**

**10:00 A.M. (FRANKFORT TIME) MOTION PANEL,  
JUDGE CLAYTON, PJ, JUDGE CAPERTON AND  
JUDGE THOMPSON.**

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

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

**LOUISVILLE – Contact Marti Dodd – (502) 595-3441**

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

**DATE: Monday, November 2, 2009**

**11:00 AM PJ: NICKELL, HON. C. SHEA VANMETER, HON. LAURANCE B. LAMBERT, HON. JOSEPH E.**

**2007CA001853 ARNOLD W. CARTER v JAMIE D. SMITH**

**2007CA001891  
2007CA001892**

(1) Whether trial court properly voided former school superintendent's consulting contract due to violation of Kentucky Open Meetings Act; (2) whether trial court properly denied former superintendent's motion to alter, amend or vacate; (3) whether trial court properly denied former superintendent relief on theory of quantum meruit.

**CIVIL BOURBON COUNTY HON PAUL F ISAACS**

Appellant Atty:

**CHILDERS, JOE JR**

Appellant Name:

**CARTER, ARNOLD**

Appellee Atty:

**BURCHETT, SAM**

**DUNCLIFFE, NEIL**

Appellee Name:

**BOURBON COUNTY BOARD OF EDUCATION**

**SMITH, JAMIE**

**\*\* NOTE:PREVIOUSLY ON 10/7/09 AT 2:15 PM IN FRANKFORT, KY**

**01:00 PM PJ: WINE, HON. THOMAS B. NICKELL, HON. C. SHEA HARRIS, HON. WILLIAM R.**

**2009CA000114 LAWYERS MUTUAL INSURANCE COMPANY OF KENTUCKY v PAUL STEWART**

Issue is whether a surety on supersedeas bond can later escape liability thereon without an order of the court where its principle purpose is extinguished.

**CIVIL KNOX COUNTY HON JOHN KNOX MILLS**

Appellant Atty:

**SAUNDERS, DARRELL**

Appellant Name:

**LAWYERS MUTUAL INSURANCE COMPANY OF KENTUCKY**

Appellee Atty:

**HOSKINS, RALPH**

Appellee Name:

**STEWART, PAUL**

**\*\* NOTE:**

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

**DATE: Monday, November 2, 2009**

01:45 PM PJ: HARRIS, HON. WILLIAM R.

NICKELL, HON. C. SHEA

WINE, HON. THOMAS B.

2008CA002140 MICHAEL L. BERNARD v BLEDSOE, LLC

Bernard, et al., appeals from a Russell Circuit Court order purportedly entered on October 14, 2008, and which stayed arbitration pending final resolution of an earlier case in which the trial court had declined to order arbitration. This court dismissed the appeal in the other case as untimely. The Appellants argue that a lack of jurisdiction over the person, non-compliance with the local rules regarding notice, and improper application of res judicata are grounds for reversal.

CIVIL

RUSSELL COUNTY

HON VERNON MINIARD

Appellant Atty:

Appellant Name:

DUTTON, C III

BERNARD, MICHAEL

RATLIFF, ERIN

Appellee Atty:

Appellee Name:

NAPIER, GARY

BLEDSOE, LLC

BYROM, DONALD

W. JASPER, LLC

\*\* NOTE:PREVIOUSLY AT 2:30 PM

02:30 PM PJ: THOMPSON, HON. KELLY

NICKELL, HON. C. SHEA

WINE, HON. THOMAS B.

2008CA001394 BASIL TURBYFILL v EXECUTIVE BRANCH ETHICS COMMISSION

The appellee alleges that appellant attempted to use its official position in the governor's office to give others an advantage in obtaining jobs. Appellant argues that the governor's pardon mandates a dismissal of the ethics proceedings.

CIVIL

BOYLE COUNTY

HON DARREN W. PECKLER

Appellant Atty:

Appellant Name:

JARRELL, JOE

TURBYFILL, BASIL

NASH, PATRICK

Appellee Atty:

Appellee Name:

NICKLES, DANA

EXECUTIVE BRANCH ETHICS COMMISSION

STEFFEN, JOHN

\*\* NOTE:ORIGINALLY ON 10/15/09 AT 10:00 AM IN FRANKFORT, KY

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

**DATE: Monday, November 2, 2009**

**03:15 PM PJ: STUMBO, HON. JANET L.**

**THOMPSON, HON. KELLY**

**WINE, HON. THOMAS B.**

**2008CA000540 JOHN D. KING v JOHN R. ALLEN**

MOR appeal from defense verdict in medical malpractice trial. Issues include exclusion of expert testimony due to alleged CR 26.02 violation, application of the collateral source rule, admission of medical records without supporting testimony, and failure to disclose bias of witness.

**CIVIL FAYETTE COUNTY HON KIMBERLY N BUNNELL**

Appellant Atty:

**PETERS, FRED**

Appellant Name:

**KING, JOHN**

Appellee Atty:

**GROHMANN, JAMES**

Appellee Name:

**ALLEN, JOHN**

**\*\* NOTE:PREVIOUSLY ON 10/15/09 AT 1:30 PM IN FRANKFORT, KY**

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

**DATE: Wednesday, November 4, 2009**

**02:30 PM PJ: MOORE, HON. JOY A. COMBS, HON. SARA W. LAMBERT, HON. JOSEPH E.**  
**2008CA002187 STAR RUN, INC. v ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**

This appeal involves a decision from Kentucky's EPA, which was affirmed by the circuit court. The case involves whether underground mining adversely affected the water wells of various citizens, whose cases were consolidated.

<b>CIVIL</b>	<b>FRANKLIN COUNTY</b>	<b>HON PHILLIP J. SHEPHERD</b>
	<u>Appellant Atty:</u>	<u>Appellant Name:</u>
	<b>DUFF, DONALD</b>	<b>STAR RUN, INC.</b>
	<u>Appellee Atty:</u>	<u>Appellee Name:</u>
	<b>BRYANT-LENTZ, GLINA</b>	<b>ENVIRONMENTAL AND PUBLIC PROTECTION CABINET</b>

**\*\* NOTE:**

**03:15 PM PJ: MOORE, HON. JOY A. COMBS, HON. SARA W. LAMBERT, HON. JOSEPH E.**  
**2008CA002311 SOUTHERN INDUSTRIAL, LLC v MAXINE, LLC**

This appeal involves statutory interpretation of KRS 376.010, i.e, whether a silo is a structure for the purposes of a Mechanic's Lien and Materialman's Lien.

<b>CIVIL</b>	<b>FAYETTE COUNTY</b>	<b>HON JAMES D ISHMAEL</b>
	<u>Appellant Atty:</u>	<u>Appellant Name:</u>
	<b>LYONS, J. JR.</b>	<b>SOUTHERN INDUSTRIAL, LLC</b>
	<b>WARD, CHARLES</b>	
	<u>Appellee Atty:</u>	<u>Appellee Name:</u>
	<b>TUCKER, MARTIN</b>	<b>CENTRAL BANK &amp; TRUST COMPANY</b>
	<b>HITCHCOCK, DANIEL</b>	<b>LEVINE, KENNETH</b>
	<b>BACK, ADAM</b>	<b>MAXINE, LLC</b>
	<b>SMITH, GEORGE</b>	

**\*\* NOTE:**

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

**DATE: Thursday, November 5, 2009**

**10:00 AM PJ: MOORE, HON. JOY A. COMBS, HON. SARA W. LAMBERT, HON. JOSEPH E.**  
**2008CA001756 ESI COMPANIES, INC. v RAY BELL CONSTRUCTION COMPANY, INC.**

This appeal involves a dispute over work Appellant performed as a subcontractor for Appellee. The Appellant argues that the trial court erred in granting a motion to dismiss on the grounds of collateral estoppel.

**CIVIL FRANKLIN COUNTY HON THOMAS D. WINGATE**

Appellant Atty:

**GEISEN, WILLIAM  
SALZMAN, MARTIN  
SURREY, MICHAEL**

Appellant Name:

**ESI COMPANIES, INC.**

Appellee Atty:

**HINKLE, BUCKNER JR  
LOGHRY, RYAN**

Appellee Name:

**RAY BELL CONSTRUCTION COMPANY, INC.**

**\*\* NOTE:**

**10:45 AM PJ: LAMBERT, HON. JOSEPH E. COMBS, HON. SARA W. MOORE, HON. JOY A.**  
**2008CA001948 BARBER CABINET COMPANY, INC. v LUNDY L. SPARKS**

Appeal from summary judgment dissolving mechanic's lien based on conclusion that no contract existed between parties. Barber Cabinet argues trial court erred in assigning burden of proof on it, admitting parol evidence, and finding that no contract existed.

**CIVIL JESSAMINE COUNTY HON C. HUNTER DAUGHERTY**

Appellant Atty:

**HIATT, JEFFREY  
LLOYD, J.  
PARKER - CO REP, LINDA**

Appellant Name:

**BARBER CABINET COMPANY, INC.**

Appellee Atty:

**MATTMILLER, M.**

**POWELL, LARRY**

**DESIMONE, ANDREW**

**MOLONEY, PHILLIP**

**HAMILTON, MICHAEL**

**STANSBURY, CHRISTOPHER**

Appellee Name:

**E-Z BUILDERS, LLC**

**FIFTH THIRD MORTGAGE COMPANY**

**LEXINGTON UNIQUE COMFORT OF  
KENTUCKY, LLC**

**RICK SMITH EXCAVATING, INC.**

**SPARKS, LUNDY**

**\*\* NOTE:**

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

**DATE: Thursday, November 5, 2009**

11:30 AM PJ: COMBS, HON. SARA W.

MOORE, HON. JOY A.

LAMBERT, HON. JOSEPH E.

2008CA002409 KENDRA KELLEY v JOHN S. POORE

Personal injury case in a boating accident. Appellant challenges refusal of judge to grant directed verdict and alleges error as to jury instructions on duty of care to watch for other for other vessels.

CIVIL FAYETTE COUNTY HON SHEILA R. ISAAC

Appellant Atty:

GORHAM, CHARLES  
STEPHENS, R

Appellant Name:

KELLEY, KENDRA

Appellee Atty:

THOMPSON, MELISSA  
WALTERS, JOHN

Appellee Name:

POORE, JOHN

\*\* NOTE:PREVIOUSLY ON 11/4/09 AT 1:00 PM



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

**DATE: Tuesday, November 10, 2009**

**12:00 PM PJ: THOMPSON, HON. KELLY**

**COMBS, HON. SARA W.**

**HARRIS, HON. WILLIAM R.**

**2008CA001517 RYAN JONES v COMMONWEALTH OF KENTUCKY**

Appellant appeals from an order revoking his probation and argues that the trial court should have granted him limited immunity so that he could testify at the revocation hearing without fear of incrimination relating to pending felony charges.

**CRIMINAL**

**HARDIN COUNTY**

**HON JANET P. COLEMAN**

Appellant Atty:

**FEARS, SHELLY  
SCHMIDT, KATHLEEN**

Appellant Name:

**JONES, RYAN**

Appellee Atty:

**LAWSON, JAMES**

Appellee Name:

**COMMONWEALTH OF KENTUCKY**

**\*\* NOTE:PREVIOUSLY ON 9/16/09 AT 11:30 AM**

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

**DATE: Thursday, November 12, 2009**

**10:00 AM PJ: KELLER, HON. MICHELLE M. ACREE, HON. GLENN E. CAPERTON, HON. MICHAEL O.**  
**2008CA000541 SECILY BAXTER v DR JOSEPH G. FINE**

In this medical malpractice claim, Baxter appeals from judgment in favor of Dr. Fine, arguing that circuit court erred by not applying res ipsa loquiter.

**CIVIL FAYETTE COUNTY HON SHEILA R. ISAAC**

Appellant Atty:

**ROBERTS, HAROLD  
ZORIN, DAVID**

Appellant Name:

**BAXTER, SECILY**

Appellee Atty:

**CAMDEN, ANDIE  
GROHMANN, JAMES**

Appellee Name:

**FINE, JOSEPH**

**\*\* NOTE:**

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

**DATE: Thursday, November 12, 2009**

**10:45 AM PJ: KELLER, HON. MICHELLE M. ACREE, HON. GLENN E. CAPERTON, HON. MICHAEL O.**  
**2008CA001084 ANGELA HOUCHINS v COMMONWEALTH OF KENTUCKY**

Houchin appeals her convictions of arson, insurance fraud, and wanton endangerment, arguing the circuit court erred when it permitted a rebuttal witness to testify, when it instructed the jury, and when it denied her motion for a separate trial.

**CRIMINAL GRAYSON COUNTY**

**HON BRUCE T. BUTLER, JUDGE**

Appellant Atty:

**POTTER, SAMUEL  
SCHMIDT, KATHLEEN**

Appellant Name:

**HOUCHINS, ANGELA**

Appellee Atty:

**FERGUSON, TODD**

Appellee Name:

**COMMONWEALTH OF KENTUCKY**

**\*\* NOTE:**

**11:30 AM PJ: KELLER, HON. MICHELLE M. ACREE, HON. GLENN E. CAPERTON, HON. MICHAEL O.**  
**2008CA001715 TARA ISOM Jr v COMMONWEALTH OF KENTUCKY**

Isom appeals from the circuit court's pre-trial order permitting the Commonwealth to introduce evidence of prior convictions.

**CRIMINAL FAYETTE COUNTY**

**HON KIMBERLY N BUNNELL**

Appellant Atty:

**DRAKE, JAMESA  
SCHMIDT, KATHLEEN  
SMITH, MEGGAN**

Appellant Name:

**ISOM, TARA**

Appellee Atty:

**MOORE, JASON**

Appellee Name:

**COMMONWEALTH OF KENTUCKY**

**\*\* NOTE:**