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I. SIGNIFICANT KENTUCKY COURT DECISIONS

A. SUPREME COURT DECISIONS

1. Other Significant Decisions

Diana Metzger, et al. v. Auto-Owners Insurance Company, et al., 2018-SC-0070-DG
http://opinions.kycourts.net/sc/2018-SC-000070-DG.pdf

No UIM Coverage Under LLC Policy When Member Driving Personal Vehicle for LLC Business.

Members of a Limited Liability Company ("LLC") obtained a commercial automobile policy, which included underinsured motorist ("UIM") coverage for the LLC's vehicles. A member of the LLC drove her personally-insured vehicle on a trip to conduct business on behalf of the LLC. The member's vehicle was involved in the accident and the at fault driver only had $25,000 in liability coverage, thus triggering a potential UIM claim to the LLC's insurer.

The LLC's insurer denied coverage. The Kentucky Supreme Court determined summary judgment in favor of the LLC's insurer was proper as the LLC was the named insured, not the member herself, and the member was not driving a scheduled vehicle at the time of the accident. The fact the member was carrying out business on behalf of the LLC was inconsequential, as the policy neither required an individual to be conducting the business of the LLC at the time of his or her injury, nor guaranteed coverage if he or she was conducting the business of the LLC.

Darryl Isaacs, et al. v. Sentinel Insurance Company Limited D/B/A The Hartford, 2018-SC-0078-DG
http://opinions.kycourts.net/sc/2018-SC-000078-DG.pdf

No UIM Coverage for Individual Under Policy for his Professional Services Company.

The plaintiff was struck by an automobile while bicycling. The plaintiff settled with both the driver who struck him and with his personal underinsured motorist (UIM) coverage. The plaintiff's law firm, which was a professional services company (PSC), had a commercial automobile policy with the insurer, which included UIM coverage. A UIM claim was filed against this insurer.

The subject insurance policy in this case included a section entitled "B. Who Is An Insured." That section provides:

> *If the Named Insured is designated in the Declarations as:*
>
> *1. An individual, then the following are "insureds":*
>
> *The Named Insured and any "family members."*
>
> *a. Anyone else "occupying" a covered "auto" or a temporary substitute for a covered "auto."*

[…]

b. Anyone for damages he or she is entitled to recover because of "bodily injury" sustained by another "insured."

2. A partnership, limited liability company, corporation or any other form of organization, then the following are "insureds":

a. Anyone "occupying" a covered "auto" or a temporary substitute for a covered "auto."

The policy listed the PSC law firm, and not the individual plaintiff, as the named insured.

The Kentucky Supreme Court agreed with the lower courts that no coverage was due and owing under the PSC's insurance policy. It found the plaintiff did not qualify as an insured under the terms of the policy under the facts of the case. Specifically, the Supreme Court held a PSC is not synonymous with its sole shareholder. The Court also held that the policy language at issue was unambiguous and it would "not disturb the parties' contractual rights in the absence of an ambiguity."

Angela Jackson and Lamont Marshall v. Estate of Gary Day and USAA General Indemnity Company, 2018-SC-000297-DG
http://opinions.kycourts.net/sc/2018-SC-000297-DG.pdf

Dismissal Upheld on Statute of Limitations, Despite Delay in Discovery of Tortfeasor Death.

Plaintiffs were injured in a two-vehicle accident with the tortfeasor in February 2014. Before the statute of limitations period expired, pursuant to KRS 304.39-230(6), the plaintiffs filed a complaint against this tortfeasor. There were multiple unsuccessful attempts to effectuate service. Subsequently, a sheriff's return filed in the record on May 18, 2016, indicated that the tortfeasor was deceased. However, it was not until receipt of a special bailiff report, in August 2016, and after expiration of the limitations period, that all parties discovered the tortfeasor's death.

On December 19, 2016, plaintiffs then filed a third amended complaint, which named the tortfeasor's estate in place of the tortfeasor individually. The estate then filed a motion for summary judgment arguing that the claims were time barred by the statute of limitations. Conversely, the plaintiffs argued that the third amended complaint could relate back to the original complaint pursuant to CR 15.03.

The Kentucky Supreme Court found the claims were properly dismissed. The claims were filed outside the statute of limitations period, Ky. Rev. Stat. Ann. § 304.39-230(6), and the requirements of Ky. R. Civ. P. 15.03, which relates to "relation back" of claims and defenses, were not met. The insured died almost a full year before the plaintiffs filed their initial complaint, and the tortfeasor's estate did not exist until after the statute of limitations expired. The estate could not have known about the proceedings against it during the applicable limitations period, a requirement of Rule 15.03, because it was not until after the statute of limitations expired that the plaintiff's petitioned for the appointment of a public administrator.

Dennis Thomas, as Administrator of the Estate of Glenda Thomas, Deceased, et al. v. University Medical Center, Inc. d/b/a University of Louisville Hospital, et al., 2018-SC-000454-DG
http://opinions.kycourts.net/sc/2018-SC-000454.pdf

Post-Incident Reports and Admissibility/Inadmissibility as Subsequent Remedial Measures.

A patient underwent surgery performed by a sixth-year neurosurgical resident, under the supervision of an attending surgeon. After the surgery, the patient suffered a brain injury from lack of blood flow and later died.

The administrator of the deceased's estate filed a medical negligence suit against the hospital, the resident, the attending physician, and a private neurosurgery practice. During discovery, the existence of a "Root Cause Analysis and Action Plan" ("RCA") was discovered. The admissibility of this report, as a potential subsequent remedial measure, became an issue.

The Kentucky Supreme Court held that the trial court erred in excluding the RCA under KRE 407, which addresses subsequent remedial measures. However, the Supreme Court found that error was harmless. As a matter of first impression, the Supreme Court held that whether a post-incident investigatory report like the RCA is admissible turns on whether the report recommends a remedial change and whether that change was actually implemented. Generally, KRE 407 will not prevent the admission of a report when its suggested remedial measures are not taken, as the information would not have made the underlying incident any less likely to occur. The Supreme Court did acknowledge that in rare situations it may be possible to characterize similar reports as "measures" which, if conducted before the incident would reduce the likelihood of the occurrence. If an investigatory report includes a recommendation for a remedial measure, and that measure is taken, the report is so inextricably intertwined with the subsequent remedial measure that it must be excluded under KRE 407.

Jassica Sneed v. University of Louisville Hospital, et al., 2019-SC-000048-DG
http://opinions.kycourts.net/sc/2019-SC-000048-DG.pdf

Supreme Court Declines to Allow Medical Malpractice Action to Proceed Under Expanded Arguments as to Continuous Treatment Doctrine and Alleged Fraudulent Concealment of Medical Records.

The plaintiff delivered her baby at the hospital and during delivery she suffered a fourth-degree laceration. Two weeks later she was diagnosed with a rectovaginal fistula. She later sued the hospital and various doctors and nurses. The trial court ruled in favor of the medical practitioner defendants on the basis of a statute of limitations argument. The plaintiff argued this was improper and the statute of limitations was tolled based upon (1) the continuous treatment doctrine and (2) the alleged fraudulent concealment of her medical records, which delayed her discovery of the doctors who delivered her baby. A third argument was presented regarding alleged confusion created by the hospital as to whether the treating doctors were employees or independent contractors.

The Kentucky Supreme Court made several rulings. First, the Supreme Court declined to expand the continuous treatment doctrine to situations where a patient continues to receive care at the same hospital, but not by the same doctor. Second, the Supreme Court declined to apply equitable tolling principles under a fraudulent concealment argument because the plaintiff was aware of her cause

of action prior to the running of the statute of limitations. Third and finally, the Supreme Court determined there was not an issue of material fact as to whether the doctors were agents of the hospital because the hospital took reasonable steps to notify patients that they would be treated by independent contractor doctors and not employee doctors.

Seiller Waterman, LLC, et al.; Pamela M. Greenwell; Gordon C. Rose; and Paul J. Hershberg v. RLB Properties, Ltd., 2018-SC-000558-DG
http://opinions.kycourts.net/sc/2018-SC-000538-DG.pdf

Wrongful Use of Civil Proceedings Claim Prohibited Against Attorney by Non-Client.

A law firm, acting on behalf of its client, sued a third-party. That third-party later sued the law firm under a variety of theories, including wrongful use of civil proceedings, abuse of civil process, civil conspiracy, slander of title, violations of 434.155 by allegedly filing an illegal lien, negligence, and negligent supervision.

The Kentucky Supreme Court determined that neither the desire to earn attorney fees nor the filing of a claim seeking damages on behalf of a client constitutes an improper purpose sufficient to sustain a wrongful use of civil proceedings/process claim. Furthermore, a professional negligence claim may not be brought against an attorney by a party who is neither the attorney's client nor an intended third-party beneficiary of the attorney's legal work. Finally, KRS 413.245, which contains a one-year statute of limitations applicable to the rendering of professional services and legal work, remains applicable to claims against attorneys, even when malice is alleged.

LP Louisville East, LLC D/B/A Signature Healthcare of East Louisville, et al. v. Kenneth R. Patton, 2019-SC-000016-DG
http://opinions.kycourts.net/sc/2019-SC-0016-DG.PDF

Arbitration Agreement Executed by Agent/Power of Attorney Found Valid and Enforceable.

A father granted his son a power of attorney, which included agency authorization for the son to act on behalf of the father as to the father's "maintenance" and "health." The son thereafter admitted the father to a long-term care facility. The admittance included signing an arbitration agreement with the facility. The father later fell and died. Wrongful death claims were presented on behalf of the estate and the son individually.

The Kentucky Supreme Court found the arbitration agreement was valid and enforceable based on the son's authority to sign a necessary, non-optional arbitration agreement in order to obtain the father's admittance into the long-term care facility. The Supreme Court also found that because son signed the arbitration agreement in his individual capacity, in addition to signing as his father's authorized representative, the arbitration agreement was valid and enforceable as to the son's individual wrongful death action.

2. Appellate Court Decisions

a) Insurance Coverage Decisions

Marshall v. Kentucky Farm Bureau Mutual Insurance Company, NO. 2019-CA-001059-MR
http://opinions.kycourts.net/coa/2019-CA-001059.pdf

"Service" as Used in the Phrase "Used to Service an Insured's Residence" is Not Ambiguous.

After her husband was killed in an ATV accident, the plaintiff filed a wrongful death action seeking damages against the driver of the ATV. The driver was insured under a homeowner's insurance policy that covered his residence. The insurance policy excluded coverage for the use of "motorized land conveyances," which included ATVs. One of the exceptions to the exclusion from coverage was for a vehicle or conveyance not subject to motor vehicle registration, which was "used to service an insured's residence."

Both the trial court and Court of Appeals determined the subject homeowner's policy did not provide coverage in relation to the ATV. They determined the word "service" in the exception to the exclusion was not ambiguous and the ATV was never used to serve the residence.

The driver of the ATV and the homeowner-insured testified that he never used ATV, either before or after the accident, to perform yard work or other tasks for his residence. Rather, he testified that he used the ATV to give rides to children around the neighborhood, to hunt, and in connection with his landscaping business on one occasion. Therefore, summary judgment in favor of the insurance company was appropriate.

Kentucky Farm Bureau Mutual Insurance Company v. Brewer, NO. 2018-CA-000736-MR
http://opinions.kycourts.net/coa/2018-CA-000736.pdf

Mere Passage of Time Between Reservation of Rights Letter and Declaratory Judgment Action Does Not Result in Waiver of Coverage Defense.

The insured was a developer and excavator of residential property. The insured sold certain property and in April of 2015 the buyer of that property claimed excavation work performed by the insured led to a landslide. The insured notified his insurer of the claims asserted by the buyer. The insured had two policies with his insurance company, a farm owner policy, and a commercial general liability policy. The insurance company then sent the insured a reservation of rights letter informing the insured that it was reserving its rights to deny coverage because of the late notice of the loss, and the claims, including allegations of fraud, might be excluded under the policy. The insurance company advised that it was reserving rights to additional defenses, should they become known during the investigation of the claim. The letter also informed the insured that the insurance company had employed counsel to represent him in defending any lawsuit. Finally, the letter stated: "If you disagree with our proceeding as outlined above, you may contact this office within 14 days of this letter." These events related to the reservation of rights occurred in April of 2015.

In July of 2017, the insurance company intervened in the pending lawsuit and in March of 2018 it filed a declaratory judgment action asserting there was no coverage for the claims against the insured and that it therefore had no duty to defend or indemnify the insured.

The Kentucky Court of Appeals held that the lower court erroneously concluded that the mere passage of time between the reservation of rights and the filing of a declaratory judgment action was sufficient to preclude the insurance company from asserting a no-coverage defense. However, the lower court had not addressed whether the insurer had misrepresented to the insured that it was no longer defending under a reservation of rights or whether the insured had been prejudiced by the insurance company's failure to earlier assert a no-coverage defense. Therefore, the case was remanded to the lower court for further deliberations.

Thomas v. Perkins, NO. 2017-CA-001875-MR
http://opinions.kycourts.net/coa/2017-CA-001875.pdf

Childcare Exclusion Upheld and Not Void Against Public Policy.

Plaintiffs filed a lawsuit for negligence and gross negligence when their child was injured while in the care of defendants. Plaintiffs sought indemnification under the defendants' homeowners' insurance policy. However, the Kentucky Court of Appeals determined the defendants provided childcare services and that the policy's childcare exclusion applied. The Court of Appeals rejected the plaintiffs' arguments that (1) the defendants' negligence was excepted from the exclusion for childcare services and (2) that the childcare services exclusion was void as against public policy. The Court of Appeals took particular note of the fact the defendant husband testified he would hold the children or let them sit on his lap. He also explained he did not, as plaintiffs contended, provide only occasional childcare not subject to the policy exclusion, nor was he a remote and disinterested third-party.

b) UM/UIM Decisions

Davis v. Progressive Direct Insurance Company, NO. 2019-CA-000850-MR
http://opinions.kycourts.net/coa/2019-CA-000850.pdf

Horse-Drawn Buggy Not a "Motor Vehicle" Under Either the MVRA or Insurance Policy.

While riding her motorcycle, the insured collided with a horse-drawn buggy. She subsequently submitted an uninsured (UM) motorist claim to her insurer. The insured appealed the following two coverage issues. First, she argued the lower court erroneously concluded that a horse-drawn buggy did not qualify as a "motor vehicle" under the Motor Vehicle Reparations Act (MVRA), KRS 304.39-010. Second, she argued the lower court erroneously concluded that the horse-drawn buggy did not qualify as a "motor vehicle" as defined by the language of her insurance policy.

The Kentucky Court of Appeals ruled in favor of the insurance company. First, the Court determined MVRA defines a "motor vehicle" as one which is "propelled by other than muscular power." KRS 304.39-020(7). Second, a horse-drawn buggy does not qualify as a motor vehicle for purposes of uninsured motorist coverage. This was consistent with the prior case of *Rosenbaum v. Safeco Ins. Co. of America*, 432 S.W.2d 45 (Ky. 1968). The Court found there was no indication the insurance company intended to cover events of that type or that the insured had any such belief when she purchased the policy.

Stone v. Ky. Farm Bureau Mut. Ins. Co., NO. 2019-CA-1739-MR
https://appellatepublic.kycourts.net/api/api/v1/publicaccessdocuments/2d8f3b3337d3e19683bd338fa4b9d963bbc65a8e02e6163d53e144ba2a5b33cc/download

Loss of Consortium Not Recognized for Adult Child.

The plaintiffs were the mother and a minor son of a woman who was killed in a car accident. They submitted a claim for consortium damages under the underinsured motorist ("UIM") portion of an automobile insurance policy. The Kentucky Court of Appeals determined the claims were excluded under the terms of the subject policy. The mother's claims were dismissed because Kentucky does not recognize a claim for loss of consortium for an adult child. The son's loss of consortium claim was excluded from coverage because the claim was derivative of the excluded primary wrongful death claim.

c) Employment Decisions

Dixie Fuel Company, LLC v. Wynn, NO. 2018-CA-000984-MR
http://opinions.kycourts.net/coa/2018-CA-000984.pdf

Up-the-Ladder Immunity Granted, No Need to Show Work Performed Regular or Recurrent Part of Contractor's Work.

The employer sought immunity from a personal injury claim filed by a worker pursuant to the exclusive remedy provision set out in KRS 342.690 of Kentucky's Workers' Compensation Act. The Kentucky Court of Appeals determined the employer was entitled to the exclusive remedy set forth in KRS 342.690(1), as it contracted with the contractor to mine the coal on its property and therefore was entitled to up-the-ladder immunity for the injuries the employee sustained while he was working in the course and scope of his employment for the contractor. The owner did not need to establish that the work performed by the employee was a regular or recurrent part of the contractor's work.

Holder v. Paragon Homes, Inc., NO. 2019-CA-000908-MR
http://opinions.kycourts.net/coa/2019-CA-000908.pdf

No Duty Owed to Independent Contractor Under Kentucky OSHA Statute Under Facts of Case.

The Kentucky Court of Appeals found a construction company did not owe an independent contractor's employee any duty under the Kentucky Occupational Safety and Health Act where the independent contractor had contracted with the homeowners and had not reached out to the company to coordinate a time for the employee to perform the work. Therefore, there was no pseudo employer-employee relationship as contemplated by the case law interpreting KRS 338.031(1), which is the OSHA statute addressing the obligations of employers and employees. The Court of Appeals also found the company did not owe the employee any duty to maintain the premises in a reasonably safe manner where a large step from the garage into the house was apparent to the employee because he had been to the house when a ramp was in place, he should have known this was a safety measure, and when he arrived on site the day of his fall and saw that the ramp was gone, he should have reasonably known it was a safety hazard.

d) Governmental Immunity Decisions

Wallace v. Martin, NO. 2018-CA-001260-MR
http://opinions.kycourts.net/coa/2018-CA-001260.pdf

No Qualified Immunity in Case of Defamation Per Se.

While the plaintiff was fired from his employment as a school bus driver following a disciplinary incident with a child, he was subsequently acquitted of a fourth-degree assault charge stemming from the same incident. He thereafter sued a police officer and the school superintendent for malicious prosecution, abuse of process, and defamation. The trial court granted the officer's motion for summary judgment on the basis of qualified immunity, but the Kentucky Court of Appeals reversed. The Court of Appeals explained qualified immunity is not a blanket shield for all tort claims, but only generally protects negligent acts. Following precedent *Martin v. O'Daniel*, 507 S.W.3d 1, the Court of Appeals reasoned that one who acts with malice is not entitled to immunity, for if one has no malice, one needs no immunity, since proof of malice is a necessary element to prevail on a claim of malicious prosecution. In an issue of first impression, the Court of Appeals then determined the same reasoning of *Martin* equally applies to claims of defamation *per se*.

e) Other Significant Decisions

Nichols v. Zurich American Insurance Company, NO. 2019-CA-000071-MR
http://opinions.kycourts.net/coa/2019-CA-000071.pdf

Refusal to Allow Discovery as to All Post-Litigation Conduct was Permissible and Summary Judgment in Favor of Insured in Bad Faith Case Upheld.

Following a grant of summary judgment to an insurance company in a bad faith lawsuit, the insured appealed and argued he was denied access to certain discovery and evidence. The trial court had not permitted discovery of all post-litigation conduct and communications, but, rather, only allowed discovery of evidence related to settlement that was not otherwise privileged. The Court of Appeals found this was permissible and not an abuse of discretion by the trial court. Furthermore, the Court of Appeals found that since nothing in the underwriting file could have negated the reasonable basis for the insurance company's denial of the underinsured (UIM) motorist claim, the trial court did not err in finding the production of the underwriting file irrelevant to the bad-faith claim.

Poore v. 21st Century Parks, Inc., NO. 2019-CA-000855-MR
http://opinions.kycourts.net/coa/2019-CA-000855.pdf

Kentucky Recreational Use Statute and Fee Use of Landowner Park.

The Kentucky Court of Appeals sought to determine whether the surviving spouse and the estate of the decedent were entitled to compensatory and punitive damages from a landowner that owned and operated a park, as well as its employees, for their alleged negligence in connection with the decedent's death during a kayaking trip when the decedent accessed a state-controlled waterway from one of the landowner's parks. The Court of Appeals determined the landowner and its employees were entitled to summary judgment based on Kentucky's Recreational Use Statute,

KRS 411.190, because the decedent's free use of the landowner's park and the landowner's involvement in the case fell within the scope and purpose of the statute.

Wal-Mart Real Estate Bus. Trust v. Hopkins County Coal, NO. 2019-CA-1369-MR
https://appellatepublic.kycourts.net/api/api/v1/publicaccessdocuments/0b2edd28fbd4b0234a6c0b7fbcf21c7753c7cf0684d70f4d38e48e566cbd3c9f/download

Discerning Between General Occurrence Rule and Discovery Rule in Mine Subsidence / Property Damage Case.

The Kentucky Court of Appeals was tasked with determining whether the "general occurrence rule" or the "discovery rule" applied to a property damage claim stemming from mine subsidence.

The "general occurrence rule" provides that a cause of action accrues, and the period of limitation begins to run, where negligence and damages have both occurred. The discovery limitation period begins to run when the cause of action was discovered or, in the exercise of reasonable diligence, should have been discovered. This rule is a codification of the common law "discovery rule," and often functions as a savings clause or second bite at the apple for tolling purposes. The "discovery rule" is available only in cases where the fact of injury or offending instrumentality is not immediately evident or discoverable with the exercise of reasonable diligence, such as in cases of medical malpractice or latent injuries or illnesses."

In a mine subsidence and property damage case, the Court of Appeals found the "general occurrence rule" applicable and in turn found the plaintiff's property damage and negligence claim was barred by the statute of limitations. In rejecting the plaintiff's effort to apply the "discovery rule" the Court of Appeals noted the following: (1) plaintiff was aware of potential subsidence as early as 1992 or two years before it began construction on its store location, (2) a 1994 engineering consultant report stated the possibility of subsidence could not be precluded, (3) the subject store was completed in 1995 and nine months later cracking began to appear in the drywall and tile floor, which got worse over time, (4) the plaintiff did not conduct a geotechnical investigation on the property until 2002, (5) experts determined the last subsidence event occurred in 2009, and (6) in 2010, more than five years prior to the filing of the complaint, a project was opened to investigate "possible subsidence remediation."

McAlpin v. American General Life Insurance Company, NO. 2019-CA-000053-MR
http://opinions.kycourts.net/coa/2019-CA-000053.pdf

No Breach of Duty by Insurance Agent in Offering Life Insurance but Not Accidental Death Insurance.

The plaintiff sued an insurer and insurance agent based upon the argument the insurance agent breached a professional obligation owed to him when the agent offered to sell him life insurance but did not offer to sell him accidental death insurance.

The Court of Appeals ruled in favor of the insurance company and agent. The Court of Appeals found there was no affirmative false statement alleged in support of the plaintiff's negligent misrepresentation claim. Furthermore, the plaintiff's negligence claims did not show a breach of duty, as he said he wanted a $1,000,000 life insurance policy, an accidental death policy in that amount was unavailable, and the insurance agent's duty was to present possible solutions to the

needs of the customer, which the customer stated were life insurance for his son, which the agent in fact offered.

Frankfort Plant Board Municipal Projects Corporation v. BellSouth Telecommunications, LLC, NO. 2019-CA-000193-MRANDNO. 2019-CA-000239-MR
http://opinions.kycourts.net/coa/2019-CA-000193.pdf

Violation of Dig Law Found to be Negligence Per Se.

The Kentucky Court of Appeals analyzed and upheld the validity of an easement and then held that a failure to comply with the Dig Law, KRS 367.4911, which then led to the damages to the surrounding facilities, constituted negligence *per se*, for purposes KRS 446.070. The Court of Appeals specifically determined the defendant was a utility operator and thus a member of the class KRS 367.4901 was designed to protect. It also found the utility had a valid easement for its underground facilities. Because of the failure to obtain a location marking of underground facilities, the entity performing construction was negligent *per se*.

Porter v. Allen, NO. 2019-CA-0115-MR
https://appellatepublic.kycourts.net/api/api/v1/publicaccessdocuments/e02ef72bfe9b3dffcc247b1baecb13cc2d9cedf95bf715fd64e70960f2d3dc8e/download

Exclusion of Impairment Rating from Evidence.

A three-car accident resulted in relatively minor damage. However, the plaintiff claimed to have injuries to her head, neck, left shoulder, and lower back. The defendant tortfeasor stipulated to fault for causing the accident but contested damages. The defendant moved to exclude physician testimony as to an American Medical Association (AMA) permanent impairment rating. The defendant argued that because plaintiff previously testified she returned to full-time employment and was not making a claim for impairment or destruction of earning capacity, the impairment rating would mislead the jury. The Kentucky Court of Appeals determined the trial court properly excluded the impairment rating evidence as it would confuse the jury and be unfairly prejudicial.

Hensley v. Traxx Management Company, NO. 2018-CA-000928-MRANDNO, 2018-CA-001213-MR
http://opinions.kycourts.net/coa/2018-CA-000928.pdf

No Liability for Store When Attendant Pursues and Kills Thief Following Robbery.

The decedent perpetrated a robbery and threated the gas station attendant's family upon departure. The gas station employee pursued, shot, and killed the decedent following the robbery. The Court of Appeals determined the store was not vicariously liable for its employee's actions. There was no evidence to indicate that the gas station failed to use ordinary care in hiring or retaining the employee, nor that hiring or retaining the employee created an unreasonable risk of harm to the decedent.

Bramlett v. Ryan, NO. 2019-CA-000122-MR
http://opinions.kycourts.net/coa/2019-CA-000122.pdf

Children Age 7-8 Old Enough to Appreciate Hazards of Pools, No Duty to Warn.

Plaintiff's seven-year-old son drowned in defendant's swimming pool during a swim party. The evidence indicated that at least four adults were providing supervision around the pool at the time of the child's death. The Court of Appeals ruled summary judgment for the host/property owner was proper. The Court of Appeals first determined the child was a licensee as opposed to an invitee. The duty of care owed, therefore, was a general duty of care. The Court of Appeals determined that children aged seven or eight are considered old enough to appreciate the possible hazards of use of "confined waters or swimming pools. Therefore, there is no duty to warn children as young as seven concerning the hazards of bodies of water, such as private swimming pools, as in this case.

The Court of Appeals also determined there was also no evidence that the pool created an unreasonable risk triggering a duty to warn the child. Therefore, the defendant hosts could not be held liable for the child's death under a general duty to licensees as they had no obligation to warn him of the hazards of swimming in a private swimming pool.

These cases were pending at the time this summary was printed. To confirm whether the Supreme Court has issued a decision in this case, we invite you to visit our website at http://www.rolfeshenry.com.