

**Kentucky Court Of Appeals**  
**Cases of Note**  
**May-June, 2015**

Note: To open hyperlink, take one of the following steps:

1. Hold down the control (“Ctrl”) key and click on the link.
2. Right-click on the link and select “Open Hyperlink”.

**INSURANCE**

**Adams v. State Farm Mutual Automobile Insurance Company**

**[2013-CA-002152](#) 06/12/2015 2015 WL 3638004 DR Pending**

Opinion by Judge Clayton; Judges J. Lambert and Thompson concurred. The Court of Appeals reversed a circuit court order granting a declaratory and summary judgment to the appellee insurer on appellants’ uninsured motorist and personal injury protection benefit claims. Appellee argued that appellants had not complied with the terms of the insurance contract when the passengers failed to participate in an Examination Under Oath (EUO). The circuit court agreed and dismissed appellants’ complaint. In reversing, the Court of Appeals held that in a case such as this where there were medical and police reports reflecting the injuries and events that had occurred, a policy clause requiring an EUO prior to payment of a claim (and as a bar to the claim should one not be done) would be in direct opposition to the purpose of the Motor Vehicle Reparations Act.

**TORTS**

**Fortney v. Guzman**

**[2013-CA-000419](#) 05/22/2015 2015 WL 2437551 DR Pending**

Opinion by Chief Judge Acree; Judges Maze and Stumbo concurred. The Court of Appeals affirmed a circuit court order granting summary judgment to appellees on appellant’s defamation claim. The circuit court determined that the allegedly defamatory statements were protected by a qualified privilege, and that appellant adduced no evidence sufficient to create a genuine issue of fact that appellees abused or waived the privilege. Appellant relied on *Stringer v. Wal-Mart Stores, Inc.*, 151 S.W.3d 781 (Ky. 2004), for the proposition that the fact of falsity justifies an inference of malice and argued that her allegations of falsity were sufficient to create genuine issues as to both falsity and malice. In affirming, the Court of Appeals relied on the recent decision of *Toler v. Sud-Chemie, Inc.*, 458 S.W.3d 276 (Ky. 2015), and concluded that *Toler* overrules *Stringer* to the extent that the case could be cited for the proposition that malice can be inferred from the fact of falsity alone. Because appellant produced no evidence of appellees’ malice, relying entirely on the now defunct inference, the Court held that appellant failed to create a genuine issue of material fact regarding malice that would have defeated the qualified privilege.

## ARBITRATION

### **Kindred Nursing Centers Limited Partnership v. Cox**

**[2014-CA-000196](#) 06/05/2015 2015 WL 3525113 DR Pending**

Opinion by Judge VanMeter; Judges Clayton and Jones concurred. The Court of Appeals affirmed an order denying Kindred's motion to compel arbitration with respect to a wrongful death claim, holding that under Kentucky precedent, wrongful death claims are not subject to arbitration. Following the decision in *Ping v. Beverly Enterprises, Inc.*, 376 S.W.3d 581 (Ky. 2012), the Court determined that a decedent cannot agree to arbitrate wrongful death claims because wrongful death claims are not derivative of the decedent's personal injury claims and accrue separately as a means to compensate the pecuniary losses of the wrongful death beneficiaries. The Court further determined that this does not constitute disparate treatment of wrongful death claims as prohibited under the Federal Arbitration Act (FAA). Kentucky contract law applies when determining the validity of arbitration agreements under the FAA, and under Kentucky law, an individual may not agree to arbitrate claims which are not his own.