

**Kentucky Court Of Appeals**  
**Cases of Note**  
**[January-February, 2016](#)**

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

**INSURANCE**

**Kentucky Farm Bureau Mutual Insurance Company v. Armfield**

**[2014-CA-001559](#) 02/26/2016 2016 WL 748388**

Opinion by Judge VanMeter; Judge Jones concurred; Judge Stumbo dissented and filed a separate opinion. On review from a grant of summary judgment, which found that a loss of consortium claim was not excluded from underinsured motorist (UIM) policy language excluding bodily injury coverage sustained by an insured while occupying or operating a motorcycle, the Court of Appeals reversed. The Court held that a spouse’s loss of consortium claim is not an independent injury but, rather, derivative of the other spouse’s personal injury claim. Therefore, the exclusion of bodily injury coverage for an insured precludes recovery by his or her spouse under a loss of consortium claim. In making this determination, the Court rejected the holding in *Hoskins v. Kentucky Farm Bureau Mut. Ins. Co.*, No. 2011-CA-001454-MR (Ky. App. Oct. 12, 2012). In her dissenting opinion, Judge Stumbo relied on the reasoning in *Hoskins*, noting that ambiguities in an insurance contract are to be resolved in favor of the insured. Judge Stumbo further reasoned that limitations of insurance coverage must be clearly defined and expressed in order to be enforced. Since the plaintiffs’ policy did not explicitly bar recovery for loss of consortium or derivative claims, Judge Stumbo would have affirmed the judgment of the circuit court.

**ARBITRATION**

**Imhoff v. Lexington Public Library Board of Trustees**

**[2014-CA-000385](#) 01/15/2016 2016 WL 192017**

Opinion by Judge Combs; Judges Dixon and D. Lambert concurred. The former executive director of the Lexington Public Library moved to confirm an arbitration award against the library’s board of trustees on her breach of contract claim. The circuit court vacated the award with regard to consequential damages and post-judgment interest, but confirmed the award in the amount of \$256,940.62 - the former director’s salary for the remainder of her four-year term. The parties brought an appeal and cross-appeal from the decision. The Court of Appeals vacated and remanded, holding that the former director waived her right to pursue arbitration when she opted to engage the judicial process by filing a civil breach of contract action. The former director initially indicated her intention to waive the arbitration provision of her employment contract and invoked the full judicial process without reference to the provision. However, she then proceeded to seek arbitration of the matter without any litigation in circuit court. The circuit court dismissed the action in deference to her request for arbitration. The Court of Appeals concluded that recourse to arbitration was inappropriate under the circumstances and that the circuit court erred in failing to find that the former director had waived her right to arbitrate by electing to file the civil action. Thus, enforcement of the arbitration award was a moot point. Consequently, the Court vacated the circuit court’s judgment and remanded the matter for litigation to proceed.

## **TORTS**

### **Auslander Properties, LLC v. Nalley**

[2014-CA-000022](#) 01/29/2016 2016 WL 350726

Opinion by Judge Stumbo; Judges Jones and Maze concurred. The Court of Appeals affirmed a judgment on a jury verdict finding appellant liable for injuries sustained by appellee Joseph Nalley. Appellant hired Nalley to perform maintenance work at rental properties, and Nalley was injured during the performance of this work due to a lack of safety equipment. The Court held that as it pertained to Nalley, appellant was an employer for the purposes of the Kentucky Occupational Safety and Health Act (KOSHA) and the federal Occupational Health and Safety Act (OSHA). A violation of OSHA/KOSHA regulations created a cause of action for Nalley pursuant to KRS 446.070.

## **WORKERS' COMPENSATION**

### **American Woodmark Corp. v. Mullins**

[2015-CA-000880](#) 01/22/2016 2016 WL 304085

Opinion by Judge Thompson; Judges Clayton and Nickell concurred. Danny Mullins filed a workers' compensation claim after he sustained a work-related injury while operating a forklift for American Woodmark. He later amended his Form 101 to include an intentional safety violation. American Woodmark did not file a Form 111 within the required time. On appeal, the issues presented to the Court of Appeals were as follows: (1) whether American Woodmark demonstrated good cause for untimely filing its Form 111 or, alternatively, whether Mullins waived the untimely filing when he did not move for a default judgment; (2) whether the Workers' Compensation Board erred in remanding the case to the Administrative Law Judge for a determination of the extent of any impairment caused by each injury alleged in Mullins's Form 101; and (3) whether there was sufficient evidence of an intentional safety violation. The Court held that the ALJ did not abuse his discretion when he found that American Woodmark did not demonstrate good cause for untimely filing its Form 111 when the only evidence was that the Form 101 was not timely forwarded to counsel for American Woodmark. The Court further held that a motion for default judgment was not required to trigger the provisions of KRS 342.270 and 803 KAR 25:010 § 5(2) and, therefore, allegations in the Form 101 were properly deemed admitted. Consequently, there was no error in the Board's remand to the ALJ. Finally, the Court held that the ALJ did not err in assessing a safety violation penalty where there was testimony that American Woodmark was aware of the hazards that contributed to Mullins's injuries.