

Kentucky Supreme Court
Cases of Note
[November-December, 2018](#)

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

1. Hold down the control (“Ctrl”) key and click on the link.
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Note: No Summaries were posted for December, so information from the Court’s minutes is posted in lieu of summaries.

TORTS

Nicole Peterson, Etc., et al. v. Bethany Foley, et al.

[2017-SC-000028-DG](#) November 1, 2018

Opinion of the Court by Justice Cunningham. Minton, C.J.; Cunningham, Hughes, Venters, and Wright, JJ., sitting. Minton, C.J.; Hughes, Venters, and Wright, JJ., concur. Keller, J., dissents by separate opinion. Peggy McWhorter died in her sleep while incarcerated in the Russell County Detention Center. Her death was attributed primarily to a hydrocodone overdose. Appellant, the administratrix of McWhorter’s estate, filed a wrongful death claim against the Jailor and Deputy Jailors. The trial court granted summary judgment in favor of the Jailors. In a split decision, the Court of Appeals affirmed the trial court’s order. The Supreme Court of Kentucky affirmed and held that there was no need to address the issue of qualified immunity because Appellants could not prove causation at trial. More specifically, the undisputed evidence indicated that several different 10 Deputies visited McWhorter’s cell and signed the log at least every hour and, in fact, sometimes more frequently. It would be speculative to apportion fault amongst the various defendants. Moreover, Appellant could not demonstrate McWhorter’s time of death. Therefore, the Jailors were entitled to summary judgment in their favor.

Raymond Hayes and Dena Hayes V. D.C.I. Properties-D KY, LLC and The Nelson Stark Company

[2017-SC-000340-DG](#) December 13, 2018

All Sitting. Cunningham, Hughes, Keller, VanMeter, Venters and Wright, JJ., concur. Minton, C.J., concurring in result only

Questions Presented: Torts. Personal Injury. Trespasser. Attractive Nuisance. 16 year old minor trespasser was not entitled to the presumption of the attractive nuisance doctrine.

Barbara Smith v. Bonnie Smith

[2017-SC-000348-DG](#) December 13, 2018

Opinion of the Court by Justice VanMeter – Reversing and remanding. All sitting. Cunningham, Hughes, Keller, VanMeter, And Wright, JJ., concur. Minton, C.J., dissents by separate opinion in which Venters, J., joins.

Questions Presented: Torts. Personal Injury. Slip and fall. Status of a visitor as an invitee, licensee or trespasser continues to define the scope of the property owner’s duty to the visitor.

INSURANCE

Government Employees Insurance Company v. Jordan Sanders, et al.

[2016-SC-000546-DG](#) November 1, 2018

Opinion of the Court by Justice Wright. Minton, C.J.; Cunningham, Keller, Venters, JJ., concur. Hughes, J., concurs in result only. VanMeter, J., not sitting. GEICO denied payment of basic reparation benefits (BRBs) to cover claimants' medical treatment. The trial court granted summary judgment in favor of GEICO and the Court of Appeals reversed. The Supreme Court of Kentucky granted discretionary review and affirmed the Court of Appeals, though for different reasons. The question the Court considered was whether GEICO can deny BRB claims based on a paper review of the medical claims. The Court held it could not. Specifically, the Court stated: "The medical treatments and invoices are presumed to be reasonable. It requires prompt payment and recovery of any improper payment must be accomplished by filing an action in court."

Lee Comley v. Auto-Owners Insurance Company

[2017-SC-000596-DG](#) December 13, 2018

Opinion of the Court by Chief Justice Minton – Reversing and remanding. All sitting. Minton, C.J., Hughes, VanMeter, Venters, And Wright, JJ., concur. Cunningham, J., dissents by separate opinion in which Keller, J., joins.

Questions Presented: Insurance Law. Homeowners Coverage. Damage to a home resulting from a nearby water main break. Scope of the "water damage" exclusions of the policy.

AUTOMOBILE TRANSFERS

The Travelers Indemnity Company v. Martin Cadillac, Inc. D/B/A Martin Dodge Jeep Chrysler v. Charles Armstrong, Etc.

[2017-SC-000041-DG](#) November 1, 2018

Opinion of the Court by Justice Keller. Minton, C.J.; Cunningham, Keller, Venters, Wright, JJ., and Clark and Royse, SJ., sitting. All concur. Hughes and VanMeter, JJ., not sitting. Martin Cadillac, Inc. (Martin) accepted a vehicle as a trade-in on November 30, 2013; on December 6, 2013, Martin provided the vehicle to ABC Auction (ABC) to sell. There, DeWalt Auto purchased the vehicle. At that time, the title had not been provided to ABC, nor was it provided to DeWalt Auto. After the auction sale, Martin completed the statutorily required notice to the county clerk to record title assignment, but admitted it was not timely completed. The assignment to Martin was recorded by the county clerk on January 2, 2014. Johnathan Elmore purchased the vehicle from DeWalt Auto on January 19, 2014. On January 20, 2014, he provided proof of insurance through Nationwide to DeWalt Auto and took possession of the vehicle. On January 24, Martin delivered paperwork to ABC, transferring title and ABC transferred the proceeds check from the sale of the vehicle to Martin. On April 5, 2014, Elmore was in a car accident, and both he and his passenger, Craig Armstrong, were killed. Travelers insured Martin; it argued that the transfer to ABC and, subsequently, DeWalt Auto, was not an assignment to a "purchaser for use" under Kentucky Revised Statute (KRS) 186.220(5) and, therefore, Martin was not required to verify proof of insurance before the sale. Martin had an assignment to the vehicle; but, if Martin complied with all the relevant requirements of KRS 186A.220, then it would not be considered the "owner" for insurance purposes, according to KRS 186.010(7)(c). The Court held that KRS 186A.220(5) does not apply to dealer-to-dealer transactions and a seller must only verify insurance when the buyer is a "purchaser for use," a consumer buyer. Martin substantially complied with all the relevant requirements in KRS 186A.220 and, therefore, was not the "owner" of the vehicle at the time of Elmore's accident.

PUNITIVE DAMAGES

William J. Yung, et al. v. Grant Thornton, LLP

[2016-SC-000571-DG](#) December 13, 2018

[2017-SC-000151-DG](#) December 13, 2018

Opinion of the Court by Justice Hughes – Affirming in part and reversing in part. All sitting. Minton, C.J., Cunningham, Keller, VanMeter, and Wright, J.J., concur. Venters, J., concurs In part and dissents in part by separate opinion.

Questions Presented: Torts. Taxes. Fraud by Misrepresentation and Omission. Client's Justifiable Reliance. Punitive Damages. Taxes and I.R.S. interest are recoverable damages when they flow from fraudulent and negligent conduct. Award affirmed of \$80 million in punitive damages, in addition to compensatory damages of \$19.315 million for fraudulent and grossly negligent tax and accounting services.