

Kentucky Court Of Appeals
Cases of Note
[November-December, 2014](#)

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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”.

TORTS

Halle v. Banner Industries of N.E., Inc.

[2012-CA-001997](#) 12/19/2014 453 S.W.3d 179

Opinion by Judge Thompson; Judge Stumbo concurred; Judge Taylor concurred in result only. A coal mining company’s financiers brought suit against prior investor entities for fraud in the inducement, breach of contract, tortious interference with business relations, civil conspiracy, and abuse of process. The circuit court denied the investor entities’ motion to dismiss based on the judicial statements privilege, and the investor entities appealed. The Court of Appeals affirmed, holding that the judicial statements privilege does not apply to conduct and has no application to abuse of process claims. The Court further held that the privilege does apply to interference with business relations and fraud in the inducement claims to the extent the claims rely on communications made preliminary to, in the institution of, or during the course of a judicial proceeding. Additionally, it applies only if those communications were material, pertinent, and relevant to the judicial proceeding.

INDEMNITY

Butt v. Independence Club Venture, Ltd.

[2013-CA-001400](#) 12/19/2014 453 S.W.3d 189

Opinion by Judge Dixon; Judge Clayton concurred; Judge Jones concurred in result only. After entering into settlement agreements with an intoxicated driver and the driver’s insurer, an injured passenger and the co-administrators of the estates of two other passengers filed suit against the nightclub that sold alcohol to the driver on the night of the accident under the Dram Shop Act. The Court of Appeals affirmed an order granting summary judgment in favor of the nightclub and dismissing appellants’ cause of action for violation of the Act. The Court held that a “hold harmless” provision in appellants’ release of claims against the intoxicated driver and the driver’s insurer precluded recovery against the nightclub under the Act. In *Destock #14 v. Logsdon*, 993 S.W.2d 952 (Ky. 1999), the Supreme Court of Kentucky held that pursuant to KRS 413.241(3), a tortfeasor remains primarily liable for injuries while the dram shop is secondarily liable with a right of indemnity against the tortfeasor. Thus, the “hold harmless” provision releasing the tortfeasor, his family, and insurance company effectively nullified all dram shop liability. Although appellants intended to preserve their right to pursue a claim against appellee, they agreed to hold harmless and indemnify the released parties from “any and all claims, liens, causes of action, demands or suits of any kind which may have been brought because of the accident referred to herein” Appellants were then precluded from any recovery against appellee because it, in turn, would be entitled to indemnity against the tortfeasor for the amount of any recovery, and appellants would be required to hold the tortfeasor harmless to the extent of the indemnification. The Court noted that this is the “circuitry of litigation” that courts must avoid.

WORKERS COMPENSATION

Stevenson v. Mohon

[2013-CA-001539](#) 12/05/2014 2014 WL 6872169 Rehearing Denied

Opinion by Judge J. Lambert; Chief Judge Acree and Judge Jones concurred. In an appeal from a summary judgment entered in favor of the defendants in a wrongful death action, the Court of Appeals affirmed. The decedent passed away when he fell off of a tractor while he was working for his employer. The Court held that the exclusive remedy defense in KRS 342.690 applied to bar his estate's civil claim against his employer and manager because the decedent was acting in the course and scope of his employment when the fatal accident occurred. The Court also held that the estate failed to state a cause of action for negligence against the remaining defendants because none of them owed a duty to the decedent, nor was the accident foreseeable. Finally, the Court rejected the estate's argument that it had insufficient time to develop proof.