

**Kentucky Supreme Court**  
**Cases of Note**  
**May-[June](#), 2014**

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”.

**Note: No Court in May**

## **TORTS**

### **MV Transportation, Inc. v. Richard G. Allgeier (Executor of the Estate of Barbara Allgeier, Deceased)**

**[2012-SC-000462-DG](#) June 19, 2014**

Opinion of the Court by Justice Venters. All sitting; all concur. Wheelchair-bound passenger injured in a fall from a paratransit bus brought suit against paratransit bus company alleging negligence and gross negligence and asserting liability based upon company’s direct negligence and liability of company for employee’s negligence based upon respondeat superior. The trial court granted summary judgment to the company on the passenger’s claim for punitive damages and, following trial, entered a judgment in favor of the passenger for compensatory damages based on the jury verdict. The Court of Appeals affirmed the verdict awarded for compensatory damages but reversed the dismissal of the punitive damage claim, and remanded for trial on punitive damages only. Upon review the Kentucky Supreme Court held: (1) as an issue of first impression, the company’s concession that it was vicariously liable for driver’s negligence under respondeat superior did not preclude the passenger’s claim that the company was also directly liable for its own negligence upon her claims for negligent hiring, training, and retention; (2) that the motion in limine to exclude evidence of the driver’s alcoholism did not relieve the defendant of the obligation to contemporaneously object when passenger’s use of such evidence at trial exceeded the pre-trial restricting that evidence to impeachment purposes; (3) a limited retrial exclusively on the claim for punitive damages would not violate the company’s right to a trial by jury under § 7 of the Kentucky Constitution, and would not violate the requirement of KRS 411.186(1) that punitive damages be tried along with claims for compensatory damages. ruling

## **WORKERS COMPENSATION**

### **Kimberly Hanik v. Christopher & Banks, Inc., Honorable R. Scott Borders, Administrative Law Judge; and Workers’ Compensation Board**

**[2012-SC-000791-WC](#) June 19, 2014**

Opinion of the Court by Justice Keller. All sitting. Minton, C.J.; Abramson, and Venters, JJ., concur. Scott, J., dissents by separate opinion in which Cunningham and Noble, JJ., join. Christopher & Banks is one of several stores located in a mall in Louisville. The mall has a large parking lot in front of the stores which has some designated employee parking. Hanik, who worked as an assistant manager at Christopher & Banks, slipped and fell on "black ice" in a lot located behind the store. The evidence submitted to the ALJ indicated that some of Christopher & Banks's employees parked in the back lot while others parked in the general public lot in front of the store. The ALJ also considered testimony from Hanik and one other employee that they had been told by the Christopher & Banks

manager to park in the back lot. Other employees testified that they had never been told by anyone from Christopher & Banks where to park. It was undisputed that Christopher & Banks had no maintenance obligations for either the back or front lots.

Based on that evidence, the ALJ concluded that Hanik's injury did not occur within Christopher & Banks's operating premises, and he dismissed her claim. A divided Workers' Compensation Board reversed the ALJ concluding that the evidence compelled a finding that Christopher & Banks controlled the back lot because it required employees to park there or in designated spots in front of the store. The Court of Appeals reversed, finding that the ALJ's opinion was supported by evidence of substance and that the Workers' Compensation Board had engaged in impermissible fact finding. The Supreme Court affirmed the Court of Appeals. In doing so, the Court first undertook a historical review of the development of the operating premises rule. Based on that review, the Court set forth a four part analysis to be used when applying the operating premises rule: (1) whether the employer, either directly or indirectly, owns, maintains, or controls the parking facility or a portion thereof; (2) whether the employer designated where in the parking facility its employees are to park; (3) whether the employee parked in the designated area; and (4) whether the employee was taking a reasonable path from his/her car to his/her work station when injured. Applying this four part test to Hanik's claim, the Court concluded that the ALJ's opinion was supported by evidence of substance.

In his dissent, Justice Scott agreed that the four-part test was appropriate. However, he stated that the evidence overwhelmingly favored a finding that Christopher & Banks had at least indirect control over the parking lot; it had designated the back lot for employee parking; and the lot, because of its location, would not be used by the general public. Based on these findings, Justice Scott would have reversed the Court of Appeals and reinstated the Board's opinion.