

**SUPREME COURT OF KENTUCKY**

**DISCRETIONARY REVIEW GRANTED**  
(Pending Cases Only)

**DISCRETIONARY REVIEW GRANTED 8/17/05**

J. P. Morgan Chase Bank, N.A. v. Longmeyer, 2005-SC-313-DG  
Trusts. Fiduciary Duty. Issues include whether a former trustee had a fiduciary duty to inform charities removed as beneficiaries of a trust that the trust had been revised under circumstances suggesting undue influence.  
Oral argument-January 2007

**DISCRETIONARY REVIEW GRANTED 10/12/05 and CROSS MOTION GRANTED 11/16/05**

Nazar v. Branham, Executrix, 2004-SC-1015-DG and (Cross Motion)  
Branham, Executrix v. Nazar, 2005-SC-834-DG  
Medical Negligence. Issues include whether defendant surgeon was entitled to jury determination of whether he was negligent when a surgical retaining hook was left in patient following surgery, as opposed to being held negligent as a matter of law pursuant to Laws v. Harter, 534 S.W.2d 449 (Ky. 1976); on cross motion, whether surgeon could be found vicariously liable for negligence of operating-room staff in failing to count hooks.

Oral argument-January 2008

**DISCRETIONARY REVIEW GRANTED 11/16/05 and CROSS MOTION GRANTED 1/11/06**

Commonwealth v. McBride, 2005-SC-539-DG and (Cross Motion) McBride v. Commonwealth, 2005-SC-930-DG  
Criminal Law. Sex Offender Registration. KRS 17.510. Hearsay. Issues relate to (1) whether a sex offender from another state who moves to

Kentucky and fails to register in Kentucky as a sex offender violates KRS 17.510(7) if he is not first informed of his statutory duty to register; and (2) whether jury instructions relating to violation of KRS 17.510(7) must include a knowing *mens rea*. On cross motion, issues include allegations of improper hearsay testimony.

Oral argument-January 2008

### **DISCRETIONARY REVIEW GRANTED 9/13/06**

Chappell v. Kuhlman Electric Corporation, 2006-SC-140-DG and Kuhlman Electric Corporation v. Chappell, 2006-SC-144-DG

Professional Negligence. Damages. In this legal malpractice action, issues include: (1) whether the fiduciary duties of an attorney retained by an insurer to represent an insured employer in the reopening of a prior workers' compensation proceeding also extend to the employer in its current capacity as self-insured; and, if so, (2) whether the insured sustained damages as a result of the attorney's placing the interests of the insurer (or the employer as an insured) ahead of those of the employer in its capacity as self-insured.

Oral argument-October 2008

Commonwealth v. Davidson, 2006-SC-180-DG

Criminal Law. Double Jeopardy. Whether the retrial of a defendant is precluded if a conviction has been reversed on appeal due to an error in instructions where the evidence was insufficient to sustain a conviction on the instructions that had been given but there was sufficient evidence to support a conviction if proper instructions had been given.

Oral argument-June 2008

### **DISCRETIONARY REVIEW GRANTED 10/12/06**

Hyman & Armstrong, P.S.C. v. Gunderson, 2006-SC-175-DG and Sandoz Pharmaceuticals Corp. v. Gunderson, 2006-SC-179-DG,

Medical Malpractice. Products Liability. Loss of Parental Consortium. Hearsay. *Daubert* Hearing. Federal Preemption. Learned Intermediary Rule. Punitive Damages. In medical malpractice/products liability action against the doctor who prescribed, and the pharmaceutical company which manufactured, drug administered to suppress postpartum lactation, among the numerous questions raised are issues relating to (1) the failure to

conduct a *Daubert* hearing; (2) evidence allowed and excluded relating to proof of the loss-of-parental-consortium claim; (3) introduction of the cross claim which was settled prior to trial; (4) federal preemption of claims of inadequate warnings; (5) the award of punitive damages; and (6) the application of the learned intermediary rule.

Oral argument-October 2007

### **DISCRETIONARY REVIEW GRANTED 1/18/07**

Commonwealth v. Jones, 2006-SC-650-DG

Criminal Law. Possession of Firearm by Convicted Felon. Sufficiency of Evidence. Palpable Error. Issues include whether palpable error resulting in manifest injustice under RCr 10.26 occurred when prosecution failed to offer proof that rifle allegedly possessed by defendant was an operable firearm as defined by KRS 527.010(4).

Oral argument-August 2008

### **DISCRETIONARY REVIEW GRANTED 2/14/07**

Spees v. Kentucky Legal Aid, 2006-SC-506-DG

Constitutional Law. Takings. Issues include whether the failure to pay an appointed warning order attorney is an unconstitutional taking.

Oral argument-March 2008

Quintana v. Commonwealth, 2006-SC-629-DG

Criminal Law. Search and Seizure. Were the appellant's rights violated when police went into his backyard in order to see if the home had a back door and to determine if the appellant was home?

Oral argument-May 2008

Bottom v. Commonwealth, 2006-SC-823-DG

Criminal Law. Search and Seizure. The issue is the validity of the police practice of "knock and talk," in which officers approach a home in order to request consent to conduct a search when officers have suspicion of criminal conduct but do not have sufficient information to establish probable cause to obtain a search warrant.

Oral argument-May 2008

**DISCRETIONARY REVIEW GRANTED 1/18/07 and CROSS MOTION GRANTED 3/14/07**

Hume v. Franklin County Fiscal Court, 2006-SC-499-DG and (Cross Motion) Bizzack v. Hume, 2007-SC-91-DG

Zoning. Multiple, successive rezoning petitions applying to the same property. Issues include (1) the propriety of considering a new petition while a ruling on a prior petition is on appeal, (2) whether the principle of res judicata applies to the new petition, (3) law of the case considerations, and (4) whether the record should be reviewed as to whether the Fiscal Court ruling was supported by the evidence.

Oral argument-June 2008

**DISCRETIONARY REVIEW GRANTED 3/14/07**

Jones v. Commonwealth, 2006-SC-802-DG

Criminal Law. DUI. Amendment of Charges. PFO. Issues include the application and operation of KRS 189A.010(5) that fourth or subsequent offenses are to be charged as felonies and KRS 189A.120 restricting amending charges down where an individual refused to submit to testing.

Oral argument-May 2008

Workforce Development Cabinet v. Gaines, 2005-SC-965-DG

Kentucky Whistleblower Act. The issue is whether a state agency is a proper recipient of its employee's whistleblower report under KRS 61.102(1), or whether the report must be made to an investigative or law enforcement authority.

Oral argument-March 2008

**DISCRETIONARY REVIEW GRANTED 2/14/07 and CROSS MOTION GRANTED 4/11/07**

Flegles, Inc. v. Truserv Corporation, 2006-SC-471-DG and cross motion Truserv Corporation v. Flegles, Inc., 2007-SC-155-DG

Fraud. Juror Bias. Change of Venue. Issues include the appropriate evidence and proper requirements for proof of a fraud claim, and the distinction between fraud and mere puffing or sales talk. On cross motion, additional issues include questions relating to juror bias, change of venue, a contractual forum-selection clause, and waiver of the fraud claim.

Oral argument-January 2008

**DISCRETIONARY REVIEW GRANTED 3/14/07 AND CROSS MOTION GRANTED 5/16/07**

Commonwealth v. Carneal, 2006-SC-653-DG and cross motion Carneal v. Commonwealth, 2007-SC-203-DG

Criminal Law. RCr 11.42. Competency Hearings. Insanity. Issues include: (1) whether RCr 11.42 limitations period is tolled for juveniles, and (2) whether retrospective competency hearing, based on new mental evaluation, should be granted even though such a hearing had been held prior to guilty plea.

Oral argument-September 2008

**DISCRETIONARY REVIEW GRANTED 5/16/07**

Gilbert v. Nationwide Mutual Insurance Co., 2007-SC-78-DG

Auto Insurance. Property Damage. Claim against the insured's own carrier. If suit has not been filed against an offending tort-feasor within two years of an accident, is an insured barred from making a claim against their own insurer for payment under collision coverage?

Oral argument-August 2008

Hartsfield v. Commonwealth, 2007-SC-77-DG

Criminal Law. Right to Confrontation. Following death of alleged rape victim prior to defendant's trial, issues raised in motion in limine relate to the admissibility, in light of Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004), of statements made by alleged victim to the Sexual Assault Nurse Examiner during medical examination and collection of evidence, and statements made by the alleged rape victim after she ran from her home following the incident.

Oral argument-April 2008

**DISCRETIONARY REVIEW GRANTED 4/11/07 and CROSS MOTION GRANTED 6/13/07**

Scott v. Moore Pontiac, Buick, GMC, Inc., 2006-SC-701-DG and Morgan v. Scott, 2006-SC-693-DG and cross motion Moore Pontiac, Buick, GMC, Inc. v. Scott, 2007-SC-282-DG

Negligence. Assumption of Duty. Apportionment of Damages. Instructions. In action for damages arising from collision caused by prospective buyer test-driving dealer's vehicle, issues include questions relating to motor vehicle dealer's duties, causation, apportionment of damages, instructions, and use of video depositions at trial.

Oral argument-October 2008

**DISCRETIONARY REVIEW GRANTED 6/13/07**

Jenkins v. Commonwealth, 2007-SC-248-DG

Criminal Law. Child Sexual Abuse. KRE 702. Issues include application of KRE 702 to the admissibility of proffered expert testimony from a forensic psychologist concerning interview techniques and their impact upon reliability of allegations of child sexual abuse.

Oral argument-June 2008

Early v. Oldham County Board of Education, 2007-SC-8-DG

Eminent Domain. Interlocutory Judgment. Notice of Appeal. Issues include whether landowners timely filed notice of appeal from circuit court's interlocutory judgment confirming the condemnor's right to take portions of their properties.

Oral argument-June 2008

**DISCRETIONARY REVIEW GRANTED 5/16/07 and CROSS MOTION GRANTED 8/15/07**

DeVasier, Administratrix v. James, 2007-SC-130-DG and (Cross Motion) James v. DeVasier, Administratrix, 2007-SC-365-DG

Medical Negligence. Mental Health Professionals. Duty to Warn. Issues include the propriety of the jury instructions regarding a psychiatrist's duty to warn regarding a patient's threat of violence and whether KRS 202A.400 addresses such a duty even if the threat is not directly communicated to the psychiatrist.

Oral argument-September 2008

Brewster v. Colgate-Palmolive Co., 2006-SC-584-DG and (Cross Motion) Jewish Hospital Healthcare Services, Inc. v. Brewster, 2007-SC-366-DG  
Asbestos Exposure. Premises Liability. Summary Judgment. Issues include whether genuine issues of material fact exist; and whether premises owner may be found to have breached a duty of care owed to construction contractor's employee who alleged exposure to asbestos on premises.

Oral argument-September 2008

### **DISCRETIONARY REVIEW GRANTED 8/15/07**

Bianchi v. City of Harlan, 2006-SC-895-DG  
Eminent Domain. Compensation. Inverse Condemnation. Unity Rule. Where city's condemnation of several tracts allegedly decreased value of several other nearby tracts owned by condemnee, issues include whether "unity rule" required all the tracts to be considered as one for purposes of determining compensation; whether trial court was required to try condemnation and inverse condemnation claims together; and whether condemnee was entitled to file late answer challenging city's right to take.

Oral argument-March 2008

Commonwealth v. McCombs, 2007-SC-127-DG  
Criminal Law. Double Jeopardy. Issues include: (1) whether double jeopardy protection precludes conviction of both first-degree burglary and fourth-degree assault when the same injury is used to prove both offenses; and (2) whether the physical-injury element of first-degree burglary implies a culpable mental state.

Oral argument-November 2008

Louisville/Jefferson County Metro Government v. City of Prospect, Kentucky, 2006-SC-903-DG  
Annexation. Issues include whether Louisville/Jefferson County Metro Government's delay in acting on a proposed annexation ordinance caused Louisville Metro to lose priority over the City of Prospect's ordinance annexing the same property.

Oral argument-August 2008

**DISCRETIONARY REVIEW GRANTED 8/15/07 and CROSS MOTION GRANTED 10/24/07**

Rose v. Commonwealth, 2007-SC-123-DG and (Cross Motion)

Commonwealth v. Rose, 2007-SC-603-DG

Criminal Law. Search and Seizure. Search Incident to Arrest. Where automobile passenger was arrested on bench warrants, and her purse and similar personal containers remained in the car, and driver consented to search of car, issues include whether warrantless search of passenger's purse and other items was unlawful, requiring suppression of evidence discovered within containers.

Louisville/Jefferson County Metro Government v. TDC Group, LLC, d/b/a Molly Malone's, 2007-SC-315-DG and (Cross Motion) TDC Group, LLC, d/b/a Molly Malone's v. Louisville/Jefferson County Metro Government, 2007-SC-581-DG

Administrative Law. Liquor Licensing. Issues involve (1) the manner of the measurement of the KRS 241.075 minimum distance of 700 feet between retail liquor drink licensees in cities of the first class or consolidated local governments and (2) whether KRS 241.075(2) violates the local or special legislation provisions of Ky. Const. §§ 59 and 60.

Oral argument-January 2009

Commonwealth v. Stone, 2007-SC-107-DG and (Cross Motion)

Stone v. Commonwealth, 2007-SC-576-DG

Criminal Law. Evidence. Statement of Non-Testifying Co-Defendant. Issues include whether testimony revealing redacted portions of a non-testifying co-defendant's statement was properly admitted into evidence, where testimony did not identify or refer to defendant, but was factually inconsistent with defendant's claim of self-defense; whether redacting defendant's own statement to protect rights of co-defendants violated defendant's right to present a defense.

Oral argument-December 2008

**DISCRETIONARY REVIEW GRANTED 9/12/07 and CROSS MOTION GRANTED 10/24/07**

Tennill v. Talai, 2007-SC-46-DG and cross motion Talai v. Tennill, 2007-SC-673-DG



Civil Procedure. Interrogatories. Damages. Defendant defaulted as to liability, yet then participated in damages hearing. At issue is whether plaintiff, who failed to respond to interrogatories regarding the amount of damages, is prohibited from introducing evidence of unliquidated damages by Fratzke v. Murphy, 12 S.W.3d 269, 271 (Ky. 1999).

Oral argument-September 2008

### **DISCRETIONARY REVIEW GRANTED 10/24/07**

Gaskill v. Robbins, 2007-SC-190-DGE and  
Robbins v. Gaskill, 2007-SC-207-DGE

Dissolution of Marriage. Child Custody. Distribution of Property. Issues include whether there should be a legal distinction between personal goodwill and enterprise goodwill when evaluating a party's professional practice; whether the family court correctly assessed and justly distributed marital property; and whether the court properly awarded custody of the parties' child to the father.

Oral argument-June 2008

Caneyville Volunteer Fire Dept. v. Green's Motorcycle Salvage,  
2007-SC-517-DG

Sovereign Immunity. Municipal Fire Departments. Issues include whether KRS 75.070 which extends sovereign immunity to municipal and volunteer fire departments and their personnel is unconstitutional.

Oral argument-August 2008

Ten Broeck Dupont v. Brooks, 2006-SC-484-DG

Civil Rape Shield Law. Hospital patient was allegedly raped by hospital employee. Patient sued hospital under negligent hiring and retention theories. Issues include whether patient's prior sexual history should have been admitted, under KRE 412(b)(2), to support hospital's defense that intercourse was consensual.

Oral argument-October 2008

Epps v. Commonwealth, 2007-SC-312-DG

Criminal Law. Search. At issue is whether the duration (approximately fifteen minutes) of a valid traffic stop was unreasonably prolonged to allow time for the arrival of a narcotics-detection dog.

Oral argument-December 2008

## **DISCRETIONARY REVIEW GRANTED 11/15/07**

Coleman v. Bee Line Courier Service, Inc., 2007-SC-628-DG  
Settlement Agreement. No-Fault Benefits. Issue is whether Ohio Casualty Ins. v. Ruschell, 834 S.W.2d 166 (Ky. 1992), requires an indemnification agreement between an accident victim and tortfeasor to contain an explicit designation of no-fault benefits in order for the indemnification to include such benefits.

Oral argument-August 2008

Malone v. Kentucky Farm Bureau Mutual Ins. Co., 2007-SC-468-D  
Automobile Insurance. Underinsured Motorist Coverage. Settlements. Subrogation. Issues include whether notification to plaintiff's UIM carrier that plaintiff was "considering whether to accept" a specified offer of settlement and release by tortfeasor's liability insurer was sufficient to preserve plaintiff's UIM claim, where UIM carrier did not substitute payment of settlement amount within thirty days after notification and plaintiff proceeded to settle.

Oral argument-November 2008

## **DISCRETIONARY REVIEW GRANTED 12/12/2007**

Morrow v. Commonwealth, 2007-SC-505-DG  
Criminal Law. Entrapment. Instructions. At issue is whether the defendant must admit to criminal conduct in order to receive an entrapment instruction.

Oral argument-November 2008

Kentucky Retirement Systems v. Bowens, 2007-SC-509-DG  
Administrative Law. Kentucky Retirement Systems. Issues include whether opinions of treating physicians should be given greater weight than those of Medical Review Board physicians.

Oral argument-November 2008

Gibson v. Commonwealth, 2007-SC-481-DG  
Criminal Law. Indictments. Dismissal Without Prejudice. Where trial court granted Commonwealth's motion pursuant to RCr 9.64 to dismiss indictment without prejudice, and denied defendant's motion to make

dismissal with prejudice, issues include the scope of trial court's discretion and whether discretion was abused.

Oral argument-October 2008

Beaver, d/b/a Beaver Construction Co. v. Oakley, 2006-SC-813-DG  
Workers' Compensation Act. Statutory Liability as Exclusive. "Up the Ladder" Defense. Issues include whether construction contractor is entitled to exclusive-liability defense under the Workers' Compensation Act, in negligence action brought by injured employee of another company.

Oral argument-November 2008

**DISCRETIONARY REVIEW GRANTED 10/24/07 and CROSS MOTION GRANTED 12/12/07**

Cantrell v. Ashland Oil, Inc., 2006-SC-763-DG and (Cross Motion)  
Ashland, Inc. v. Cantrell, 2007-SC-818-DG  
Environmental Contamination. Evidence. Damages. Instructions. Statute of Limitations. In action by landowners against oil-drilling company alleging contamination of surface and water, issues include whether certain claims were improperly dismissed as time-barred; whether on remaining claims trial court improperly excluded evidence from plaintiffs' expert and lay witnesses; whether instructions to jury were erroneous; whether damages were no more than "stigma" damages for which there could be no recovery; and whether defendants were entitled to judgment as a matter of law.

Cabinet for Health and Family Services v. T.G., 2007-SC-436-DGE  
and (Cross Motion) T.G. v. Cabinet for Health and Family Services,  
2007-SC-821-DGE

Termination of Parental Rights. Issues include the constitutionality of KRS 625.090(1)(a)(1), either facially or in application.

Oral argument-April 2008

Rudolph v. Johnson Controls, 2006-SC-416-DG and cross-motion Johnson Controls, Inc. v. Burnside, 2007-SC-819-DG

Tax. At issue is the constitutionality of retroactive tax legislation prohibiting refunds to businesses filing unitary returns.

Oral argument-December 2008

## **DISCRETIONARY REVIEW GRANTED 1/16/08**

DIRECTV, Inc. v. Treesh, 2007-SC-714-DG

Taxation. Federal Preemption. Issue is whether KRS 160.614 which authorizes local school districts to impose a tax on direct broadcast satellite providers is preempted by federal law which exempts such providers from any tax or fee imposed by a "local taxing jurisdiction," where tax is actually paid to the state and for the benefit of a "state concern."

Oral argument-December 2008

Brownlee etc., et al. v. Commonwealth of Kentucky (Kentucky Unemployment Insurance Commission) et al., 2007-SC-126-DG

Unemployment Compensation. Administrative Procedure. Issues include whether employees who chose voluntary early retirement, with lump sum payment and benefits, are entitled to unemployment benefits.

Oral argument-November 2008

Branham v. Stewart, 2007-SC-250-DG

Professional Negligence. Attorney and Client. Infants. Guardian and Ward. Issues include whether malpractice suit may be brought by former infant and ward against attorney who represented former next friend and guardian.

Oral argument-December 2008

## **DISCRETIONARY REVIEW GRANTED 2/13/08**

Metzinger v. Kentucky Retirement Systems, 2007-SC-363-DG

Disability Retirement. Benefit Calculation. Issues include whether annuity payments, received by employee as result of global settlement involving employee's workers' compensation and civil claims, were erroneously considered in calculation of employee's disability-retirement benefit; and, if annuity payments were proper to consider, whether it was arbitrary to apply full amount of payments in calculation.

Oral argument-December 2008

Miller v. Hutson, 2007-SC-317-DG

Real Property. Caveat Emptor. Summary Judgment. Issues include whether developer-seller, who contracted with another for construction of residence for sale, may be liable to purchaser for construction defects.

Oral argument-January 2009

**DISCRETIONARY REVIEW GRANTED 4/13/07 and CROSS-MOTION GRANTED 2/13/08**

Sprint v. Leggett, 2005-SC-1023-DG, and (Cross-Motion) Leggett v. Sprint, 2007-SC-273-DG

Abuse of Process. Eminent Domain. Discovery. Issues include whether telephone company's attempted use of eminent domain statute to acquire building constitutes abuse of process.

Oral argument-December 2008

**DISCRETIONARY REVIEW GRANTED 3/12/08**

Sawyer v. Mills, 2007-SC-296-DG

Statute of Frauds. Issues include whether an audio tape recording of an oral agreement is sufficient to satisfy the requirements of the Statute of Frauds, KRS 371.010.

Oral argument-December 2008

Lexington-Fayette Urban County Government v. Johnson, 2007-SC-294-DG

Ordinances. Constitution. Equal Protection. Issues include whether 1999 ordinance making certain retired government employees eligible for government's group health-insurance plan, with government contribution, excluded retirees who had opted out of continuing coverage without government contribution after retirement; and, if the 1999 ordinance did not exclude them, whether amended 2000 ordinance that did clearly exclude them was constitutional.

Oral argument-November 2008

**DISCRETIONARY REVIEW GRANTED 2/13/08 and CROSS-MOTION GRANTED 4/16/08**

Emberton v. GMRI, Inc. 2007-SC-443-DG and (cross-motion) GMRI, Inc. v. Emberton, 2008-SC-109-DG

Personal Injury. Statute of Limitations. Discovery Rule. In lawsuit based upon hepatitis A infection allegedly contracted at Red Lobster restaurant, issues include whether discovery rule tolls one-year statute of limitations.

Oral argument-January 2009

**DISCRETIONARY REVIEW GRANTED 2/13/08 and CROSS MOTIONS GRANTED 4/16/08**

Solinger v. Pearson, 2007-SC-389-DG, and Norton Hospital, Inc. v. Pearson, 2007-SC-414-DG and (Cross-Motions) Pearson v. Solinger, 2008-SC-133-DG, and Pearson v. Norton Hospital, Inc., 2008-SC-134-DG Civil Procedure. Summary Judgment. Expert Witnesses. Issues in this medical malpractice action include whether the trial court erred in entering summary judgment in favor of the defendants after the then-*pro se* plaintiff failed to disclose timely her expert witnesses.

**DISCRETIONARY REVIEW GRANTED 4/16/08**

Blue Movies, Inc., d/b/a Love Boutique, et al. v. Louisville/Jefferson County Metro Government,  
2007-SC-812-DG

First Amendment. Adult Entertainment. Twenty-First Amendment. Issues include the constitutionality of certain provisions regulating adult entertainment establishments, particularly a provision prohibiting alcohol sales, a provision requiring disclosure of principal owners and a “no touching” provision.

Oral argument-February 2009

Breathitt County Board of Educ. v. Dot Prater, 2008-SC-41-DG  
Interlocutory Appeals. Sovereign Immunity. Issues include whether interlocutory order denying claim of immunity is immediately appealable and, if so, whether school’s provision of a residence on school property to house night watchman is a governmental function.

Oral argument-January 2009

Bravo Development, Inc. v. Scot Singleton, 2007-SC-769-DG  
Unlawful Labor Practices. Election of Remedies. Issues include whether pursuit of unpaid wages through the Department of Labor precludes invocation of the court’s original jurisdiction to pursue liquidated damages in court pursuant to KRS 337.385 based on the same underlying unpaid wages claim.

Oral argument-January 2009

Methodist Hospital v. Gilliam, 2007-SC-817-DG

Jurisdiction. Labor Law. Issues include whether a wrongful discharge claim based on alleged protected union activities is subject to the exclusive jurisdiction of the National Labor Relations Board.

Oral argument-December 2008

**DISCRETIONARY REVIEW GRANTED 5/14/08**

Tobar v. Commonwealth, 2007-SC-842-DG

Criminal Law. Sex-Offender Registration. Issues include whether the statutory requirement that a registered sex offender must (re)register upon a "change of address" is unconstitutional in the case of a registrant who becomes homeless.

Oral argument-February 2009

Bauder v. Commonwealth, 2008-SC-56-DG

Criminal Law. Sobriety Checkpoint. Investigative Traffic Stop. Primarily at issue is whether a driver's turn onto a public road within sight of a police roadblock provides police with reasonable suspicion of criminal activity justifying an investigative traffic stop.

**DISCRETIONARY REVIEW GRANTED 4/16/08 AND CROSS MOTION GRANTED 6/11/08**

Calor v. Ashland Hospital Corp., 2007-SC-573-DG and (cross motion) Ashland Hospital Corp. v. Calor, 2008-SC-317-DG

Defamation. Qualified Privilege. Interference with Contractual Relations. Instructions. Golden Rule Argument. Damages. In this case involving claims of defamation and interference with contractual relations, issues include whether the "common-interest" qualified privilege was abused; whether defendants were entitled to judgment on grounds of "statements of opinion" and "statements of truth"; whether jury was improperly instructed; whether counsel engaged in improper "Golden Rule" argument to jury; and whether damages awarded were excessive.

Oral argument-March 2009

Commonwealth of Kentucky, Transp. Cabinet, Dept. of Highways v. Johnson, 2007-SC-678-DG

Board of Claims. Highway Maintenance. Negligence. Issues include whether Department of Highways was entitled to judgment on grounds that it did not owe or did not breach duty of care with respect to roadside tree that motorist crashed into.

Oral argument-January 2009

**DISCRETIONARY REVIEW GRANTED 6/11/08**

Commonwealth v. House, 2008-SC-114-DG

Criminal Law. DUI. Pre-trial Discovery. Trade Secret. Issue is the propriety of ordering disclosure of the computer "source code" of the Intoxylizer 5000 where the manufacturer claims that it is a trade secret and the defendant urges that failure to disclose it violates his confrontation rights.

Oral argument-February 2009

Winn v. Commonwealth, 2006-SC-876-DG

Criminal Law. Juvenile Code. Violent Offenders. Juvenile turned eighteen years old prior to conviction and was, through oversight, treated as adult. Issues include how to remedy administrative mistake when defendant is too old to receive ameliorative benefits of juvenile system.

Commonwealth v. Nichols, 2007-SC-493-DG

Criminal Law. Expert Testimony. Reciprocal Discovery Rule (RCr 7.24). Issue is whether prosecution is entitled to information about defense expert, including identity and summary of proposed testimony, when expert has generated no written report.

Oral argument-January 2009

**DISCRETIONARY REVIEW GRANTED 08/13/08**

Smith v. Commonwealth, 2008-SC-60-DG

Criminal Law. Search and Seizure. Miranda Warnings. Custody Determination. Issues include the admissibility of incriminating statements where the defendant was handcuffed but not Mirandized, and specifically whether the holding in Taylor v. Commonwealth, 182 S.W.3d 521 (Ky. 2006) that handcuffing a suspect does not necessarily constitute "custody" for Miranda purposes should be re-evaluated. Also at issue is the breadth



of the safety exception which prevents questions from being deemed "interrogation."

Cochran v. Commonwealth, 2008-SC-95-DG

Criminal Law. Maternal Health Act. Prenatal Conduct/Postnatal Injury. The primary issue concerns whether the offense of wanton endangerment may extend to a pregnant woman who ingests drugs during pregnancy, which results in postnatal injury.

Martin, Administratrix v. Ohio County Hospital Corporation, 2008-SC-211-DG

Torts. Issues include the propriety of jury consideration of recovery for alleged violation of the federal Emergency Medical Treatment and Active Labor Act and for "post-death loss of consortium."

Oral argument-March 2009

Hobson v. Commonwealth, 2007-SC-645-DG

Criminal Law. Robbery. Issues include whether escape stage occurs "in the course of committing theft" under KRS 515.020.

Commonwealth v. Terry, 2007-SC-796-DG

Criminal Law. Waiver of Counsel. Issues include whether *Faretta* requirements were met after defendant refused to allow appointed counsel to represent him.

Jessamine County Property Val. Adm. v. St. Andrew Orthodox Church, Inc., 2007-SC-640-DG

Tax. Property Exemptions. The issue is whether church property, rented to third parties yet used occasionally by church members, is exempt from taxation under Ky. Const. § 170.

Oral argument-February 2009

**DISCRETIONARY REVIEW GRANTED 5/14/08 and CROSS MOTION GRANTED 9/10/08**

Hill v. Kentucky Lottery Corporation, 2006-SC-748-DG and (Cross Motion) Kentucky Lottery Corporation v. Hill, 2008-SC-380-DG

Defamation. Privilege. Post-Judgment Interest. Civil Procedure. Issues involve the privilege defense to a defamation claim, assessment of a reduced rate of post-judgment interest, and whether the appeal was timely.

**DISCRETIONARY REVIEW GRANTED 9/10/08**

Jewell v. Ky. School Bd. Assoc., 2008-SC-244-DG

Insurance. UIM Coverage. Basic Reparation Benefits. Subrogation. Double Recovery. Workers Compensation. Issues include the proper prioritization of claims against workers' compensation carrier, no-fault carrier, and UIM carrier.

Oral argument-March 2009

Commonwealth v. Lopez, 2008-SC-308-DG

Criminal Law. Probation Revocation. Uniform Code of Military Justice. The primary issue concerns the weight that courts should give to violations of the UCMJ which do not necessarily constitute an independent offense under Kentucky law.

Meece v. Feldman Lumber Company, 2007-SC-785-DG

Property. Timber. Damages. At issue is whether property owners should be awarded treble damages under KRS 364.130 for lumber removed by an entity without "color of title."

Oral argument-March 2009

**DISCRETIONARY REVIEW GRANTED 10/15/08**

Haney v. Monskey, 2008-SC-337-DG

Qualified Official Immunity. Issue is whether a counselor for the Louisville Zoo's children's camp was performing ministerial or discretionary function when carrying out the "night hike" activity with a group of children.

Kirby v. Commonwealth, 2007-SC-833-DG

Criminal Law. Violent Offenders. KRS 439.3401. KRS 533.060. At issue is application of the domestic violence exemption from violent offender parole eligibility restrictions for a son who killed a cousin who had attacked his mother.

**DISCRETIONARY REVIEW GRANTED 11/19/08**

Jaroszewski v. Flege, 2008-SC-112-DG

Civil Procedure. Failure to Prosecute. Dismissal of Complaint. Issues include whether trial court abused discretion by dismissing plaintiffs' complaint for failure to prosecute, on defendants' motions pursuant to CR 41.02.

Denton v. City of Florence, 2008-SC-324-DG

Personal Injury. Notice to City. At issue is whether the timely but partially inaccurate notice of injury complied with KRS 411.110.

Cabinet for Health and Family Services v. T.N.H., 2008-SC-318-DGE

Termination of Parental Rights. Issues involve attempted termination of parental rights of a minor mother also in CHFS custody.

**DISCRETIONARY REVIEW GRANTED 12/10/08**

King v. Commonwealth, 2008-SC-274-DG

Criminal Law. Search and Seizure. Issues include the validity of a search conducted pursuant to a mistaken belief that a fleeing suspect had entered the apartment.

Watkins v. Commonwealth, 2008-SC-567-DG

Criminal Law. Standing. Search and Seizure. Abandonment. Issues include whether a suspect's immediate flight from a vehicle after being pulled over constitutes abandonment and thereby deprives the suspect of standing to contest the subsequent search of the vehicle.

**DISCRETIONARY REVIEW GRANTED 1/14/09**

Fluke Corp. v. LeMaster, 2008-SC-530-DG

Statute of Limitations. Equitable Tolling. Issues include whether failure to report product safety concerns to federal regulatory agency estops defendant from invoking statute of limitations defense to a claim for injuries caused by the product.

Mauldin v. Bearden, 2008-SC-557-DGE

Child Custody and Visitation. Issues include whether Kentucky retained jurisdiction over visitation under KRS 403.824, a UCCJEA provision adopted in 2004.

Mullins v. Picklesimer, 2008-SC-484-DGE

Child Custody. Issues include whether the biological mother waived her superior right of custody, thus permitting a joint custody award by having acknowledged her same sex partner as a parent of the child, co-parenting the child prior to separation of the couple and later allowing extensive time-sharing and visitation with the child.

Oral argument-April 2009

**DISCRETIONARY REVIEW GRANTED 11/19/08 AND CROSS-MOTION GRANTED 1/14/09**

Commonwealth v. Lake, 2008-SC-129-DG and (Cross-Motion)

Lake v. Commonwealth, 2008-SC-876-DG

Juvenile Code. Youthful Offenders. RCr 11.42. Issues include whether juvenile charged with murder effectively waived preliminary transfer hearing in district court before being transferred to circuit court for indictment and trial as an adult under KRS 640.010; and whether offender is entitled to relief on allegations that trial counsel was ineffective and that witness committed perjury at trial.