

UPDATED: 10/13/2010

# **OCTOBER 2010 ORAL ARGUMENT CALENDAR**

Report Updated On: 10/13/2010

**Updated 10/13/2010**

**OCTOBER, 2010**

**October 12, 2010**

**9:00 – 9:45 A.M. ORAL ARGUMENT,  
BIRCHWOOD CONSERVANCY V. UNITED  
BROTHERHOOD OF CARPENTERS,  
2009-CA-001413, JUDGE ACREE, PRESIDING JUDGE,  
JUDGE DIXON AND JUDGE NICKELL, ASSOC.**

**10:00 A.M. COURT MEETING**

**October 15, 2010**

**2:00 P.M. MOTION PANEL, JUDGE JAMES LAMBERT,  
PRESIDING JUDGE, JUDGE CAPERTON AND  
JUDGE CLAYTON.**

**PHONE NUMBERS WHERE PANEL MEMBERS CAN BE REACHED WHEN ORAL  
ARGUMENTS SCHEDULED:**

**FRANKFORT – Contact Mary Zagale - (502) 573-7920**

**LOUISVILLE – Contact Marti Dodd – (502) 595-3440**

**ELIZABETHTOWN – Contact Belinda Peace – (270) 766-5039**

**LOCATION: COURT OF APPEALS COURTROOM, 360 DEMOCRAT DRIVE,  
FRANKFORT, KENTUCKY**

**DATE: Monday, October 11, 2010**

03:00 PM PJ: DIXON, HON. DONNA L.

CLAYTON, HON. DENISE G.

WINE, HON. THOMAS B.

2009CA002012

**COMPUTER SERVICES, INC. v DEPARTMENT OF REVENUE**

Did trial court err by: 1) determining that computer software is subject to sales tax; 2: misapplying the doctrine of contemporaneous construction?

CIVIL

FRANKLIN COUNTY

HON THOMAS D. WINGATE

Appellant Atty:

Appellant Name:

KALINYAK, MICHAEL  
LENARZ, STEVEN

COMPUTER SERVICES, INC.

Appellee Atty:

Appellee Name:

FERGUSON, LAURA  
SAUNDERS, LESLIE

DEPARTMENT OF REVENUE

**\*\* NOTE:**

03:45 PM PJ: WINE, HON. THOMAS B.

CLAYTON, HON. DENISE G.

DIXON, HON. DONNA L.

2009CA001476

**KENTUCKY ASSOCIATION OF FIRE CHIEFS, INC. v KENTUCKY BOARD OF HOUSING,  
BUILDINGS AND CONSTRUCTION**

2009CA001945

Consolidated appeals arising from a declaratory judgment action where Fire Chiefs sought to uphold local fire ordinances which would effectively invalidate portions of the Kentucky Building Code. Fire Chiefs claim Ky. Bd. of Housing has attempted to retroactively prohibit local ordinances through amending the building code to be a "maxi" code.

CIVIL

FRANKLIN COUNTY

HON THOMAS D. WINGATE

Appellant Atty:

Appellant Name:

BYRNE, MAURICE JR

KENTUCKY ASSOCIATION OF FIRE CHIEFS, INC.

Appellee Atty:

Appellee Name:

BARR, GARLAND IV  
TODD, THOMAS

HOME BUILDERS ASSOCIATION OF  
KENTUCKY, INC.

BELLIS, DAWN

KENTUCKY BOARD OF HOUSING, BUILDINGS  
AND CONSTRUCTION

HOPKINS, M.

**\*\* NOTE:40 MINUTE ORAL**

**LOCATION: COURT OF APPEALS COURTROOM, 360 DEMOCRAT DRIVE,  
FRANKFORT, KENTUCKY**

**DATE: Tuesday, October 12, 2010**

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**09:00 AM** PJ: **ACREE, HON. GLENN E.** **DIXON, HON. DONNA L.** **NICKELL, HON. C. SHEA**

**2009CA001413** **BIRCHWOOD CONSERVANCY, A CALIFORNIA CORPORATION v UNITED  
BROTHERHOOD OF CARPENTERS**

Civil: Whether appellee waived its defense of lack of capacity or lack of jurisdiction rendering dismissal inappropriate?

**CIVIL** **SCOTT COUNTY** **HON PAUL F ISAACS**

Appellant Atty:

**DAUGHERTY, RYAN**

**SIMPSON, T. JR**

Appellant Name:

**BIRCHWOOD CONSERVANCY, A CALIFORNIA  
CORPORATION**

.....  
Appellee Atty:

**JOHNSON, WILLIAM  
NEWCOMB, SAMUEL**

Appellee Name:

**UNITED BROTHERHOOD OF CARPENTERS**

.....  
**\*\* NOTE:PREVIOUSLY ON 9/2/10 AT 1:00 PM**

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**LOCATION: JEFFERSON COUNTY JUDICIAL CENTER, 10TH FLOOR APPELLATE COURTROOM, 700 WEST JEFFERSON STREET, LOUISVILLE,**

**DATE: Wednesday, October 13, 2010**

01:45 PM PJ: ISAAC, HON . SHEILA

ACREE, HON. GLENN E.

HENRY, HON. MICHAEL L.

2009CA002103

LARRY W. BOOTH v CSX TRANSPORTATION, INC.

Civil: Whether trial court erred in granting summary judgment for defendant on grounds that plaintiff's FELA claim was preempted by the Federal Railway Safety Act.

CIVIL

JEFFERSON COUNTY

HON SUSAN SCHULTZ GIBSON

Appellant Atty:

Appellant Name:

GRUNER, ALLEN  
HOLLON, ALVA JR  
HOLLON, JOHN

BOOTH, LARRY

Appellee Atty:

Appellee Name:

PAYNE, ROD

CSX TRANSPORTATION, INC.

\*\* NOTE:

02:30 PM PJ: HENRY, HON. MICHAEL L.

ACREE, HON. GLENN E.

ISAAC, HON . SHEILA

2009CA002197

JAMES A. NEWTON Jr. v THE UNIVERSITY OF LOUISVILLE

Wrongful termination action alleging that University employee handbook constitutes written employment contract under KRS 45A.245.

CIVIL

JEFFERSON COUNTY

HON OLU A. STEVENS

Appellant Atty:

Appellant Name:

HENRY, KENNETH

NEWTON, JAMES

Appellee Atty:

Appellee Name:

HYLAND, WENDY  
PERRY, DONNA

THE UNIVERSITY OF LOUISVILLE

\*\* NOTE:

**LOCATION: JEFFERSON COUNTY JUDICIAL CENTER, 10TH FLOOR APPELLATE COURTROOM, 700 WEST JEFFERSON STREET, LOUISVILLE,**

**DATE: Wednesday, October 13, 2010**

03:15 PM PJ: HENRY, HON. MICHAEL L.

ACREE, HON. GLENN E.

ISAAC, HON . SHEILA

2009CA002288

LESLIE SOSNIN ( NOW DENNY ) v BARRY B. SOSNIN

Appeal from sua sponte order changing custody, alleging right to counsel and to a Child Protective Services investigation within 72 hours; and alleging improper delegation of judicial power.

JEFFERSON COUNTY

HON ELEANORE GARBER

Appellant Atty:

Appellant Name:

ARROWOOD, VICKIE

SOSNIN ( NOW DENNY ), LESLIE

Appellee Atty:

Appellee Name:

SPAINHOUR, JOHN JR

SOSNIN, BARRY

\*\* NOTE:

**LOCATION: HARDIN COUNTY JUSTICE CENTER, 120 EAST DIXIE AVENUE,  
ELIZABETHTOWN, KENTUCKY**

**DATE: Thursday, October 14, 2010**

**09:15 AM PJ: SHAKE, HON. ANN O'MALLEY TAYLOR, HON. JEFF S. STUMBO, HON. JANET L.**  
**2008CA002190 RUSSELL TIM PRIDHAM Jr v COMMONWEALTH OF KENTUCKY**

Pridham appeals from a Hardin Circuit Court denial of his RCr 11.42 motion for post-conviction relief. Pridham claims that he received ineffective assistance of counsel as a result of his attorney's misinformation concerning parole eligibility in light of Padilla v. Kentucky, 130 S.Ct. 1473 (2010).

**HARDIN COUNTY**

**HON KELLY MARK EASTON**

Appellant Atty:

Appellant Name:

**VOWELS, DOUGLAS**

**PRIDHAM, RUSSELL**

Appellee Atty:

Appellee Name:

**MORROW, BRYAN**

**COMMONWEALTH OF KENTUCKY**

**\*\* NOTE:PREVIOUSLY ON 10/13/10 AT 3:15 PM**

**10:00 AM PJ: TAYLOR, HON. JEFF S. STUMBO, HON. JANET L. SHAKE, HON. ANN O'MALLEY**  
**2010CA000022 RICHARD YATES v SHELTER MUTUAL INSURANCE COMPANY**

Whether a provision in a motor vehicle insurance policy is valid.

**CIVIL**

**HARDIN COUNTY**

**HON KEN M. HOWARD**

Appellant Atty:

Appellant Name:

**GARDNER, CHADWICK**

**YATES, RICHARD**

Appellee Atty:

Appellee Name:

**THOMPSON, AMANDA**

**SHELTER MUTUAL INSURANCE COMPANY**

**\*\* NOTE:**

**LOCATION: HARDIN COUNTY JUSTICE CENTER, 120 EAST DIXIE AVENUE,  
ELIZABETHTOWN, KENTUCKY**

**DATE: Thursday, October 14, 2010**

10:45 AM PJ: TAYLOR, HON. JEFF S.

STUMBO, HON. JANET L.

SHAKE, HON. ANN O'MALLEY

2009CA002226

JOANNE SMITH v ODELL MARTIN

Whether circuit court properly rendered summary judgment dismissing defamation claim against appellee.

CIVIL

HART COUNTY

HON GEOFFREY P MORRIS

Appellant Atty:

Appellant Name:

MOULTON, C.

SMITH, JOANNE

Appellee Atty:

Appellee Name:

ALCOTT, SHAWN  
HUDSON, ROBERT

MARTIN, ODELL

\*\* NOTE:

11:30 AM PJ: TAYLOR, HON. JEFF S.

STUMBO, HON. JANET L.

SHAKE, HON. ANN O'MALLEY

2010CA000245

SHANNON BURKE v KYLE ANTHONY BURKE

Whether circuit court possessed jurisdiction to modify child custody; whether circuit court properly modified custody and timesharing.

BARREN COUNTY

HON W. MITCHELL NANCE

Appellant Atty:

Appellant Name:

ROGERS, BENJAMIN

BURKE, SHANNON

Appellee Atty:

Appellee Name:

GARDNER, JOHN

BURKE, KYLE

\*\* NOTE:

**LOCATION: COURT OF APPEALS COURTROOM, 360 DEMOCRAT DRIVE,  
FRANKFORT, KENTUCKY**

**DATE: Monday, October 18, 2010**

02:00 PM PJ: MOORE, HON. JOY A.

LAMBERT, HON. JAMES H.

NICKELL, HON. C. SHEA

2009CA002227

VINLAND ENERGY OPERATIONS, LLC. v JANICE ENGLE

Appellant challenges a jury verdict in this hostile work environment case, claiming that Appellee did not meet her burden of proof; that the trial court erred in evidentiary rulings; that the jury was not properly instructed on punitive damages; and that the compensatory damages were excessive.

CIVIL

LAUREL COUNTY

HON GREGORY A. LAY

Appellant Atty:

Appellant Name:

DEJACO, LISA  
KAMER, MAURITIA  
SNELL, VIRGINIA

VINLAND ENERGY OPERATIONS, LLC.

Appellee Atty:

Appellee Name:

CASSIS, BRYAN

ENGLE, JANICE

\*\* NOTE:

02:45 PM PJ: NICKELL, HON. C. SHEA

LAMBERT, HON. JAMES H.

MOORE, HON. JOY A.

2009CA001234

MICHAEL A. ROSSI v CSX TRANSPORTATION, INC.

2009CA001285

In action under FELA where Rossi alleged CSX negligently exposed him to excessive cumulative trauma leading to personal injuries, whether trial court erred in 1) precluding Rossi's medical expert from testifying as to cause of Rossi's injuries; 2) prohibiting Rossi from cross-examining CSX expert about unfamiliar document; 3) refusing to instruct jury on Federal Railroad Administration regulations for reporting musculoskeletal injuries; and 4) excluding rebuttal testimony. On cross-appeal, whether trial court erred in not instructing jury on proximate cause.

CIVIL

PERRY COUNTY

HON WILLIAM ENGLE

Appellant Atty:

Appellant Name:

ECKERT, THOMAS  
HOLLON, ALVA JR  
HOLLON, JOHN

ROSSI, MICHAEL

Appellee Atty:

Appellee Name:

HUGHES, GUY  
WEST, LINSEY

CSX TRANSPORTATION, INC.

\*\* NOTE: