



## Kentucky Appellate Case Law and Rules Update



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**I. GENERAL APPELLATE COURT TRENDS**

- A. Unpublished opinions continue to predominate, limiting precedential value of many decisions.
- B. Discretionary review grants remain fewer than in years past, making trial court and Court of Appeals rulings increasingly final.
- C. The courts are placing heightened emphasis on rules compliance and procedural technicalities – the Court of Appeals has mentioned [Rules of Appellate Practice](#) (RAP) requirements in multiple opinions, signaling that practitioners must rigorously follow procedural rules or risk adverse consequences.

**II. INSURANCE**

- A. *Motorists Mutual Ins. Co. v. First Specialty Ins. Corp.*, 706 S.W.3d 120 (Ky. 2024)
  - 1. This was a 4-3 decision expressly overruling *Empire Fire & Marine Ins. Co. v. Haddix*, 927 S.W.2d 843 (Ky. App. 1996).
  - 2. Case involved competing “other insurance” provisions and what coverage was primarily responsible.
  - 3. The Court held that each insurer’s “other insurance” provision was indistinguishable – “mutually repugnant” – and therefore of no effect.
- B. *State Auto Prop. & Cas. Co. v. Greenville Cumberland Presbyterian Church*, 706 S.W.3d 35 (Ky. 2024)
  - 1. This case involved a church’s roof collapse and whether the “collapse” provision in its insurance policy covered the church’s claim.
  - 2. The Court held that the policy at issue provided coverage for “collapse of a building *or any part of a building*” and held the roof did “actually collapse” under Kentucky law. [emphasis added]
  - 3. *The dissent pointed out that the majority effectively overruled prior cases.*
- C. *Erie Ins. Exchange v. Johnson*, 713 S.W.3d 149 (Ky. 2025)
  - 1. Fractured opinion involving insured’s right to specify which healthcare providers get paid first out of PIP benefits under KRS 304.39-241.

2. The Court held the insured has the right to designate the order in which the insurance company pays medical bills.
- D. *Holland v. United Servs. Automobile Ass'n*, 707 S.W.3d 541 (Ky. App. 2025)
1. Insured brought KCPA claim against homeowner policy insurer.
  2. The Court held that KCPA “requires the jury to find a causal nexus between wrongful acts and ascertainable loss.”
  3. Jury instructions using “substantial factor” were appropriate for KCPA’s causal nexus.
- E. *Powers v. Ky. Farm Bureau Mut. Ins. Co.*, 694 S.W.3d 361 (Ky. 2024)
1. MVRA statute of limitation case.
    - a. Tortfeasor’s attorney retained by insurance carrier had no authority to bind the tortfeasor’s estate to a tolling agreement.
    - b. The MVRA two-year limitations period applies even when attempting a negligence *per se* claim.
  2. The Court rejected the UIM claim because of estate issues, which barred recovery. “More specifically, a viable claim is a necessary prerequisite to UIM coverage.”

### III. DEFAMATION

*Andes Roofing, LLC v. Rusnak*, 726 S.W.3d 13 (Ky. App. 2025)

- A. Customer was dissatisfied with a roofing job and left several negative Google reviews about the business and its owner.
- B. The roofing company claimed the reviews were defamatory.
- C. The Court of Appeals affirmed the dismissal of the roofing company’s claim under Kentucky’s Uniform Public Expression Protection Act (UPEPA).
- D. The customer’s statements about the roofing company were “a matter of public concern” under the statute.
- E. With the exception of one statement, the customer’s statements were non-actionable opinion.

#### IV. MEDICAL NEGLIGENCE

- A. *Baptist Healthcare Sys., Inc. v. Kitchen*, 727 S.W.3d 362 (Ky. 2025)
1. Writ case involving whether the production of an “incident report” was privileged under [KRS 311.377](#) as part of a retrospective review process.
  2. The Court held the incident report was not protected under Patient Safety and Quality Improvement Act (PSQIA) or [KRS 311.377](#).
    - a. Exception under PSQIA for mandatory compliance (questionable).
    - b. Because created same day and factual, not a “retrospective” review for [KRS 311.377](#).
- B. *Ledford v. UofL Health-Louisville, Inc.*, 720 S.W.3d 594 (Ky. App. 2025)
1. Ledford was employed at Peace Hospital and was admitted there for mental health treatment. Co-workers allegedly accessed his medical records, which Ledford claimed was a HIPAA violation.
  2. The trial court dismissed the case because HIPAA preempted Ledford’s state causes of action.
  3. The Court of Appeals reversed, stating it was “firmly convinced that HIPAA does not categorically bar all state law claims seeking redress for the wrongful disclosure of HIPAA protected information.”
  4. The Court also had a useful discussion about negligence *per se*.
- C. *Jackson v. Mayfield KY OPCO, LLC*, 2025 WL 3768660 (Ky. Dec. 18, 2025)
1. This was a 4-3 decision involving COVID-19 immunity stemming from nursing home treatment in a medically complex patient.
  2. The Supreme Court limited COVID-19 immunity: “only available under Kentucky’s COVID immunity statute if [patient]’s death was only ‘caused by’ her contraction of COVID.”
  3. Notably, the Supreme Court relied on an Indiana Court of Appeals decision which has subsequently been reversed by the Indiana Supreme Court.
- D. *Crowder v. Yussman*, 724 S.W.3d 772 (Ky. App. 2025)
1. Case involved fertility fraud under Kentucky’s recently enacted Fertility Fraud Act (KFFA), [KRS 311.373](#).

2. The Court of Appeals affirmed summary judgment, holding that KFFA did not apply retroactively to fertility fraud occurring before the statute’s creation in 2022.
  3. The Court of Appeals also affirmed summary judgment on common law claims because the statutes of limitations and repose had expired before the suit was filed.
  4. It is doubtful this case has much widespread application, but there are other interesting aspects to this holding.
  5. This case is also a cautionary tale on AI usage. Crowder cited nonexistent case law in her brief. In defense, Crowder argued the cases were knowingly nonexistent “placeholder” citations that were meant to be replaced and counsel simply forgot.
  6. The Court of Appeals had strong words for this oversight.
    - a. The Court “caution[ed] practitioners . . . on the submission of briefs or citations without confirming their accuracy and the correctness of the resulting analysis.”
    - b. “[P]urposefully submitting a brief to a Court of law without confirming that the cited case law even exists is an affront to the dignity of the Court system, the legal profession as a whole, the judiciary, the client, and the public at large.”
- E. *Carpenter v. Saunders*, 705 S.W.3d 48 (Ky. App. 2024)
1. Very interesting informed-consent case that turned on causation.
  2. “There is no evidence that the information she claims to have lacked when providing informed consent caused the injuries of which she now complains.”

## V. JURISDICTION

- A. *Braun v. Bearman Indus., LLC*, 2025 WL 2998495 (Ky. Oct. 23, 2025)
1. Personal jurisdiction case concerning whether a Kentucky court may assert personal jurisdiction over an out-of-state gun manufacturer.
  2. The Court held that revenue from firearms sales at numerous Kentucky stores – whether directly through Bearman or third-party merchants – was significant for Kentucky’s long-arm statute.
  3. The Court also held that Bearman’s failure to participate in the discovery process impeded plaintiff’s jurisdictional discovery.

4. The Court seemingly held that plaintiffs are *entitled* to jurisdictional discovery: “a plaintiff can be expected to meet such a burden only after first being afforded ample opportunity to conduct and complete jurisdictional discovery.”
- B. *Louisville Historical League, Inc. v. Louisville/Jefferson Cnty. Metro Govt.*, 709 S.W.3d 213 (Ky. 2025)
1. In seeking judicial review, the Court held that a party’s compliance with statutory requirements for invoking court jurisdiction goes to *particular-case jurisdiction*.
  2. Issues with invoking that jurisdiction must be raised in the trial court or they will be waived.

## VI. ARBITRATION

- A. *Reynolds v. Blair*, 2026 WL 627347 (Ky. App. March 6, 2026)
1. The case involved arbitration arising from nursing home treatment and co-defendant physicians not subject to the arbitration clause.
  2. The Court of Appeals held that the trial court erred “as a matter of law in staying the wrongful death claims” against the treating physicians.
  3. The Court also held it was error to dismiss the case under [CR 77.02](#) for lack of prosecution while the case stagnated in the arbitration process.
- B. *Lexington Alzheimer's Investors, LLC v. Norris*, 718 S.W.3d 795 (Ky. 2025)
1. The case involved whether an incapacitated person’s spouse entering into an arbitration agreement for admittance into facility was a “health care decision” under Kentucky’s Living Will Directive Act.
  2. The Court held that entering into the arbitration agreement was *not* a “health care decision.”
  3. In essence, the spouse had authority to make medical decisions, not enter into contracts.

## VII. WORKERS' COMPENSATION

*Minova USA, Inc. v. Jolly*, 2026 WL 491752 (Ky. Feb. 19, 2026)

- A. This case involved up-the-ladder immunity. Minova contracted with a trucking company for delivery of raw goods. A driver was injured in an accident and filed a tort claim against Minova.

- B. The Court affirmed summary judgment because the trucking services were part of Minova’s regular business.

**VIII. BAD FAITH**

*Allied World Specialty Ins. Co. v. Wingate*, 2025 WL 3768707 (Ky. Dec. 18, 2025)

- A. Writ case involving an order compelling production of post-litigation privileged material.
- B. The Court held that the insurer’s post-litigation materials relating to settlement conduct should be produced.
- C. *But* the Court agreed that the insurer should not produce *all* post-litigation materials.
- D. The Court held that advice-of-counsel defense waived work-product protection for post-litigation settlement materials.
- E. Note: Insurer produced coverage counsel’s entire file.

**IX. EXPERT WITNESSES**

*Mullins v. Appalachian Regional Healthcare, Inc.*, 707 S.W.3d 1 (Ky. App. 2025)

- A. The Court reviewed expert disclosures and affirmed summary judgment because the expert disclosures were too general.
- B. The disclosures failed to “mention any specific nurse, any specific wrongdoing, or a particular timeframe in which these errors occurred.”
- C. The expert “must tie the breaches and even cause in fact of an injury with an opinion of proximate causation.”
- D. It is not clear whether this case will have significant effect, but it is a good reminder to make sure all necessary elements are contained in expert disclosures.

**X. CASES WORTH MONITORING**

- A. *Estate of Fuson by Hickman v. Mercy Reg’l Emerg. Med. Sys., LLC*, 2024 WL 3381440, (Ky. App. July 12, 2024) – Discretionary Review Granted
  - 1. The Court affirmed the dismissal of a wrongful-death claim because it was untimely, but allowed the children’s loss-of-consortium claim to go forward under the minor tolling statute, [KRS 413.170](#).
  - 2. The Court held the consortium claims were not derivative of wrongful death.

3. Discretionary review was granted and briefing is complete, but arguments have not been held.
- B. *Saint Elizabeth Medical Center/Summit Medical Group v. Summe*, Nos. 2025-SC-0207; 2025-SC-0236
1. Writ case involves whether a physician’s credentialing file is protected under [KRS 311.377](#) as part of a retrospective review process.
  2. Fully briefed at the Supreme Court, but no arguments have been conducted.
- C. *Diagnostic X-ray Physicians, PSC v. Lloyd*, No. 2024-SC-0216
1. The Court of Appeals held that an orthopedist expert was untimely disclosed and that it was acceptable for the orthopedist to testify regarding radiology despite not being their specialty.<sup>1</sup>
  2. The Supreme Court is reviewing whether an expert must know the applicable standard of care and whether *res ipsa loquitur* applied.
  3. *Oral argument was held in February so theoretically an opinion could be expected sometime in June.*
- D. *HMB Professional Eng’rs, Inc. v. Ives*, No. 2024-SC-0284 (consolidated cases)
1. Multiple cases consolidated.<sup>2</sup> The Supreme Court is reviewing whether federal law relating to highway design preempts Kentucky tort remedies.
  2. *Oral argument was held in February so theoretically an opinion could be expected sometime in June.*

## XI. RULES OF APPELLATE PROCEDURE AMENDMENTS (ORDER 2026-01)

The Supreme Court entered Order 2026-01 amending the RAP. The amendments became effective April 1, 2026. There are some notable changes of which you should be aware.

- A. [RAP 2](#) – Appeals as a Matter of Right
1. Subsection H added.
  2. This amendment notes that “[b]riefing in consolidated cases is treated like briefing in joint appeals, meaning that all appellants file one joint brief and one joint reply brief addressing all the consolidated cases, and each appellee files one response brief addressing all the consolidated cases.”

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<sup>1</sup> *Lloyd v. Norton Hospitals, Inc.*, 2024 WL 1685440 (Ky. App. Apr. 19, 2024).

<sup>2</sup> *Ives v. HMB Professional Engineers, Inc.*, 2024 WL 2487850 (Ky. App. May 24, 2024).

B. [RAP 22](#) – Prehearing Procedure

1. [RAP 22\(A\)\(1\)](#) – One of the more significant changes in these amendments.

- a. At the Court of Appeals, prehearing statements are no longer required.
- b. You only have to file one *if* a party files a motion for prehearing conference. See [RAP 22\(C\)\(1\)](#).

2. [RAP 22\(B\)\(2\)](#) – With the elimination of prehearing statements, the start of time changes.

If no motion for prehearing conference is filed, the Court of Appeals Clerk will enter a notice stating such, and the time for further steps will be computed from the date of the notice.

C. [RAP 23](#) – Notice to Attorney General

1. This is a new Rule.

2. Parties challenging a statute’s constitutionality must comply with [KRS 418.075](#) and provide notice to the Attorney General.

3. [RAP 23\(A\)](#) – Notice of appeal is sufficient if AG is a party.

4. [RAP 23\(B\)](#) – If *not* a party, the AG “must be served with a copy of the documents initiating the appeal (notice of appeal or motion for discretionary review)” and be given notice of the challenged statute and alleged constitutional defect.