Courthouse news

NICHOLAS DISTRICT COURT
Wednesday, Feb. 5, 1 p.m.
Honorable Wayne Fitzgerald, Judge

Barbara J. Terrell vs Raymond P. Connell, $250 claimed due plus $19.25 court costs. Judgment granted for defendant.

Mark Hughes dba Woody's Auto Repair vs Betsy Weddle, $77.02 claimed due plus $26 court costs. Dismissed for failure of parties to appear.

Clem's Custom Cut Cattle vs Marian Leonard, $92.35 claimed due plus $26 court costs. Judgment for plaintiff for $92.35 plus $26 costs.

Concrete Materials Corporation vs Kenny Thornsbury, $253.32 claimed due plus $26 court costs. Judgment for plaintiff for $253.32 plus $26 costs.

Marion Hopkins vs Hanley Tucker, motion. Passed.

Mary Lou Stone vs Reba and Jerry Whitaker, supplemental hearing. Clerk directed to notify both parties to appear March 5 for supplemental hearing.

Frankie Davis dba Frankie's Grocery vs Ann Asbury, supplemental hearing. Continued generally.

Robert Robinson vs Presley Kendall, $1,000 claimed due plus $26 court costs. Judgment for the Robinsons for $122.70 plus $26 costs.

Presley Kendall vs Sue and Bobby Robinson, $1,000 claimed due plus $36 court costs; counter-claim from Sue Robinson for $1,000 plus court costs. Claims merged with preceding.

Nicholas County Hospital vs Steven and Janice Crawford, hearing. Order entered.

Commonwealth of Ky. ex rel Cheryl Pettit vs Eddie Joe Pettit, hearing. Order entered.

Monday, Feb. 10, 1 p.m.
Honorable Wayne Fitzgerald, Judge

Scott Hobbs, public intoxication. Guilty plea, two days jail served, $4 bond fee and $10 CVF.

Clayton Morris, public intoxication. Guilty plea, 20 hours public service under supervision of sheriff's office.

Janie Hatfield, theft by unlawful taking. Bench warrant to Fleming County, no bond.

Lucy Ann Earlywine vs Walter Ollie Earlywine, hearing. Continued Feb. 24.

Willie R. Mynear, (1) resisting arrest, (2) public intoxication, (3) escape in third degree, (4) failure to maintain insurance on motor vehicle, (5) careless driving. Not guilty to all charges, trial March 31 at 1:30 p.m.

NICHOLAS CIRCUIT COURT
Thursday, Feb. 6, 9:30 a.m.
Honorable Jack Arnold, Judge

Commonwealth of Kentucky vs Arbon Florence, theft by deception. Trial with jury cancelled at the request of the prosecutor, case continued to March 6 at 9:30 a.m. at the request of the prosecutor.

Deborah Jones Hughes vs Mark E. Hughes, final hearing. Decree entered.

Timothy Ray Dale vs Patricia Tapp Dale, final hearing. Decree entered.

Darrell W. Myers vs David Catchings, et al, motion. Order entered.

Brenda White vs Steven Jolly, motion. Order entered.

Mayme House vs John Kerns, motion. Order entered.

Patsy Highland vs Robert D. Marshall, motion. Agreed order entered.

AMBULANCE RUNS

Feb. 4-Feb. 5, 1986

Feb. 4, 4:11 a.m., transported Tommy Watkins from home to Nicholas County Hospital.

Feb. 4, 12:20 p.m., transported Angie Jolly from Nicholas County Hospital to Lexington Diagnostic and back to hospital.

Feb. 5, 3:30 a.m., transported Stanley Robinson from Bourbon General to Central Baptist Hospital, Lexington Ky.

Feb. 5, 7:00 p.m., transported Ruby Trussell from home to Nicholas County Hospital.

Feb. 6, 12:30 a.m., transported George Bowles from Nicholas County Hospital to Humana Hospital, Lexington, Ky.

Feb. 6, 4:25 p.m., transported Ina Ferback from home to Johnson Mathers Nursing Home.

Feb. 6, 6:30 p.m., transported Henry Wweihner from Harrison County Hospital to Good Samaritan Hospital, Cincinnati, Oh.

Feb. 7, 6:45 a.m., transported Nancy Mitchell from home to Nicholas County Hospital.

Feb. 7, 8:30 a.m., transported Avery Mitchell from Lexington to Edgemont Manor Nursing Home, Cynthiana, Ky.

Feb. 7, 9:30 a.m., transported Nancy Mitchell from Nicholas County Hospital to home.

Feb.7, 10:15 a.m., transported Everett Fryman from Nicholas County Hospital to Good Samaritan Hospital and back to Nicholas County Hospital.

Feb. 7, 11:30 a.m., transported Settie Ritchie from home to Nicholas County Hospital.

Feb. 7, 4:20 p.m., transported Jacob Hunt from Dr. Allen Hanson's office to Lexington Clinic East, Lexington, Ky.

Feb. 7, 9:20 p.m., transported Jeff Tincher from home to Nicholas County Hospital.

Feb. 8, 4:30 p.m., transported Settie Ritchie from home to Nicholas County Hospital.

Feb. 8, 7:30 p.m., transported Robert Morris from Wreck site in Sexton's trailer Court to Nicholas County Hospital.

LOCAL INTEREST

Supreme Court of Kentucky opinions are published

SUPREME COURT OF KENTUCKY
86SC-08-OG
TERESA FRYMAN, GUARDIAN FOR SAMANTHA FRYMAN AND SABRINA FRYMAN, MINOR INFANTS — APPELLANT
v. ON REVIEW FROM COURT OF APPEALS
PILOT LIFE INSURANCE COMPANY — APPELLEE
(Nicholas Circuit Court No. 85-CI-031)

OPINION OF THE COURT
REVERSING

On May 28, 1981 William Fryman was killed in a motorcycle accident. The accident occurred at the intersection of the accident Fryman had a blood alcohol level of .20 and was operating his motorcycle at an excessive rate of speed. Fryman had been covered by a group life policy issued from the appellee, Pilot Life Insurance Company, through Fryman's employer. The policy provides $50,000 basic life coverage with a double indemnity provision where death is caused solely by "external, violent and accidental means."

The issue submitted to the trial court was whether Fryman's death fell within the definition of "accidental" death so as to entitle his estate to the extended coverage. The trial court held that Fryman's wreck was by "accidental means" since there was no allegation or inference that the wreck was done intentionally, and that the Court of Appeals reversed, holding that death is caused by accidental means if it is a result of a voluntary and discretionary act or course of conduct of the insured. We reverse.

We are of the opinion that Fryman's death was accidental within the terms of the policy in question. The words "accidental means" are not words of art and when used in insurance policies have never acquired a technical meaning in law, and must be interpreted according to the usage of the average man and as they would be read and understood by him in the light of the circumstances. Coverage and exemption clauses must be resolved in favor of the insured. Kentucky Home Mutual Life Ins. Co., 275 S.W.2d. 796 (1955). An accident is generally understood as an unfortunate consequence which befalls an actor unexpectedly, unintentionally and sometimes even for no explicable reason at all. The result is not a product of design and is not to be anticipated. Conversely, a consequence which is a result of plan, design or intent is not commonly understood as accidental.

Although there is no Kentucky case law directly on point, efforts have been made in the past to define "accident" and "accidental means" within the context of double-indemnity provisions in life insurance contracts. See e.g. Donahue, supra; Kentucky Central Life & Insurance Company v. Wilhelt, Ky. App. 367 S.W. 2d 832 (1963).

In the latter case, the decedent committed to wrestle a gun away from an assailant and in the ensuing struggle, was killed when the gun discharged. The court held that the death was from "accidental" since the decedent demonstrated a reckless disregard for his own safety in attempting to disarm the assailant to the point of inviting serious injury. The fundamental flaw with such a rule is that it subjects contract terms to analysis under tort principles, such as fault and foreseeability.

It has also been argued that Kentucky courts have long been willing to imply intent in criminal cases and that it would be incongruous to refuse to do so in a contract case. Once again, we are reluctant to analyze contract terms under principles which have technical meaning in other areas of the law.

The better practice of the opinion that unless otherwise excluded by the terms of the life insurance policy, a death is accidental absent a showing that the death was a result of plan, design or intent on the part of the decedent.

Just as principles of tort law and criminal law have no application to the contract issue in question, nor does the issue have been applicable to tort law.

Therefore, we conclude that the death in question was accidental within the terms of the policy and the extended benefits are payable.

The decision of the Court of Appeals is reversed and the judgment of the Nicholas Circuit Court is affirmed.

Stephens, C.J., and Aker, Gant, Leibson and Wintersheimer, JJ., concur.
Wintersheimer, J., files a dissenting opinion in which Stephenson, J., joins.

ATTORNEY FOR APPELLANT:
Robert S. Walker, III
Wyatt, Tarrant & Combs
80 W. Short Street
Lexington, Kentucky 40507

ATTORNEYS FOR APPELLEE:
Gregory H. Oaks
Larry C. Deener
Landrum & Pettiturant
Kentucky Trust Building
Lexington, Kentucky 40507

SUPREME COURT OF KENTUCKY
85SC-08-OG
TERESA FRYMAN, GUARDIAN FOR SAMANTHA FRYMAN AND SABRINA FRYMAN, MINOR INFANTS — APPELLANT
v. ON REVIEW FROM COURT OF APPEALS
PILOT LIFE INSURANCE CO. — APPELLEE
(Nicholas Circuit Court No. 85-CI-031)

DISSENTING OPINION BY
JUSTICE WINTERSHEIMER

I respectfully dissent because I believe that insurance underwriting practice should not be awarded under the guise of judicial construction. It is clear, in my view, any reasonably prudent person of ordinary intelligence and prudence is able to recognize that there is a likely risk of death when a person drives a motorcycle at twice the legal limit. Consequently, such conduct is not within the definition of "accident" and "accidental means" as those terms are used in insurance contracts. See e.g. Donahue, supra; Kentucky Central Life & Insurance Company v. Wilhelt, Ky. App. 367 S.W. 2d 832 (1963).

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Absolute Auction
Sat., Feb. 22, 10:30 A.M.

Located 1.6 miles southeast of U.S. 68, 7 miles west of Carlisle, on the Carpenter Pike in Nicholas County.

Real Estate: The farm consists of 58.5 acres, more or less, with improvements including a 7 bent tobacco barn with a 10'X30' open shed, a 8'X16' corn crib, a 40'X48' tobacco barn, and a large lake. There is also a six room, one bath, frame house with aluminum siding and storm windows. The basic tobacco base for 1985 was 3,755 lbs.

Auctioneer's Note: This is the opportunity you have been waiting for. Here's your chance to buy that small farm you've been wanting, and best of all, you can buy at your price!

Terms: 10% down day of sale. Balance due on or before 30 days with the deed. Possession with the deed. 1985 and 1986 taxes to be paid by the purchaser.

Earl Hamm Auctioneer
REAL ESTATE BROKER
Mark Mattox, Auctioneer and Real Estate Broker
107 Locust Street — Carlisle, KY 40311
606-289-5720 or 289-5320 or 289-2752
NOT RESPONSIBLE FOR ACCIDENTS

Estate Auction
Sat., Feb. 15, 10 A.M.

Located app. 8 miles east of Carlisle, 1 mile from Moorefield at 5532 Moorefield Road.
We have been asked to sell the following described real estate and personal property for the Estate of the late Courtney Gum.

Real Estate: The farm consists of 45 acres, more or less, and is improved with a good 4 bent tobacco barn, an old log barn, a smokehouse, a two-car garage-shed, and a six room house. Four large rooms in the house, including three bedrooms and a living room with fireplace, are log. Other rooms include a large kitchen, one bath, and a utility room. The house is heated by a fireplace and gas stoves. Extras include a number of walk-in closets, a large concrete front porch, some large fruit trees, a cellar, and a two-year-old roof. The property is served by the Sharpsburg Water District. 1985 basic tobacco base was 3,771 lbs.

Personal Property: Farmall Super A mower, plow & harrow, (2) wagons, good metal sled, (2) water tanks, fuel oil tank, Siegler oil heater, (2) coal & wood stoves, tamper top, R.R. jack, hoses, hand tools, ropes, layoff plow, vise, saw horses, tobacco presses, (2) iron bath tubs, iron kettle, corn sheller, log chains, chain saw, horse-drawn equipment - mower, plows, setter, harrow, saddles, app. 200 bales grass hay. Other items too numerous to mention.

Auctioneer's Note: Don't miss this rare opportunity to buy a small farm in the Moorefield area. For more information, contact the owner or the auctioneers.

Terms: 10% down day of sale. Balance due on or before 30 days. 1986 taxes to be paid by the buyer.
Courtney Gum Estate, Ruth Gum, Executrix.
Conley & Conley, Attorneys

Earl Hamm Auctioneer
REAL ESTATE BROKER
Mark Mattox, Auctioneer and Real Estate Broker
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The Carlisle Mercury

FOR SALE

FOR SALE: Over 150 patterns of wallpaper in stock. Borders just arrived. Many styles to choose from. Lane and browse. Reid and Vice, 289-7175. 3-13-1tc

FOR SALE: Grass hay, $1 per bale. Call 289-2642. 3-13-1tc

FOR SALE: Baled mixed hay. Jack Randolph, 289-2811. 3-13-2tc

FOR SALE: 8-sided glass with chrome dinette set, 6 matching chairs. Call 289-2106, 289-2908. 3-13-1tc

MONUMENTS — MARKERS TO MAUSOLEUMS in granite or bronze. Located exactly two and two-tenths miles from the courthouse on U.S. 68 Highway East. Phone 784-6652, Cox Monument Co., Morehead, Ky. 2-17-tfc

FOR SALE: Mixed hay — square bales $1 each, large bales $15 each; 289-2502 before 4:00. 2-6-2tc

FOR SALE OR TRADE: Farm machinery of all kinds. We have a good selection of tractors to choose from, both new and used. Sauer Implements, Route 11, north of Flemingsburg, Ky. Phone 849-4852; nights 845-9021 or 845-5721. 2-26-tfc

NOTICE

NOTICE: Farm Credit Services, Carlisle (formerly Production Credit Association) will be taking bids for cleaning services needed in our office located in the Deposit Bank building on Locust Street. Interested parties should respond in person during business hours M-F until March 2, 1986. Successful bidder will be contacted by March 14, 1986 and to begin service by April 1986. 3-13-2tc

NOTICE: Want to babysit in my home near Moorefield. For more information call 289-7502. 3-13-1tc

NOTICE: Tree trimming and removal and bucket truck work. Call Harold Massey, 289-7001. 1-9-tfc

CARD OF THANKS: The Howard family wants to thank Nicholas County Hospital and Nursing Home, Rev. Greer, the doctors, all family and friends for their concern and acts of kindness during the illness and death of Allen E. Howard. 3-13-1tc

CARD OF THANKS: The family of Lena Hann would like to thank all employees of Johnson-Mathers Nursing Home, Dr. Morford, Mathers-Gaunce Funeral Home, Rev. Mike Greer and everyone who sent flowers, food, cards and for visiting during her illness and death. Her children. 3-13-1tc

Seven of Us
on the wings of gulls
and the albatros
your spirits ride.
they flank the rocky shoreline
and blanket the rising tide
you chanced to give and gave
your most prized
possession, and for this
the moons of distant skies
are named for you.
for as you left your home
to pioneer a way into the strange
and the unknown.
and for this
we will think of you
each time we view
the heavens or gaze into
the warm glow of a new
and crackling fire.
McKenzie Patterson Ison

FOR RENT

FOR RENT: New two-bedroom house, Jacktown area. References required. 383-4266. 3-6-2tc

FOR RENT: Nicholas Square Apartments — accepting applications for one, two and three bedroom units. Equipped kitchen, central heat and air; fully carpeted, lots of storage space. Rent starts at $230. Call 289-2679, Monday-Friday between 9:00 and 12:00. Equal Housing Opportunity. 12-6-tfc

FOR RENT: 3-room downstairs apartment, on East Main. Elderly couple or lady preferred. No pets. Reference required. Cable hookup. Phone 484-2046. 3-13-1tc

FOR RENT: Modern one bedroom frame house in country with all conveniences, perfect condition, $150 monthly. Reference required. 289-7336. 3-13-1tc

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WANTED

WANTED: Carpentry, remodeling, roofing, block laying, small concrete jobs, sundecks. Free estimates, reasonable rates, guaranteed work. Call 289-2457 after 5 p.m. 3-6-3tcp

LOST

LOST: Gray miniature Schnauzer dog lost in Myers vicinity. Answers to "Schotzie." Family pet. Reward. 289-7246. 3-6-2tc

POSTED

All persons are hereby notified not to trespass, fish, hunt, trap or shoot upon the land of the undersigned. Any person caught trespassing in violation of this notice will be reported to the sheriff and prosecuted to the fullest extent of the law. It is necessary that we take this step to protect our property and wildlife.

Lillian B. Hamilton Farms, East Union Road. 1-30-tfc

All land owned and/or operated by Elizabeth Brady and Robert A. Brady on Headquarters Road and Mt. Carmel Lane. 1-16-tfc

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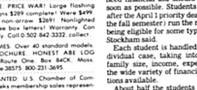

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ORDER OF COUNTY JUDGE/EXECUTIVE
ORDER FOR LOCAL OPTION
ELECTION IN NICHOLAS COUNTY, KENTUCKY

A petition for a local option election in Nicholas County, Kentucky, having been filed with the Nicholas County Clerk pursuant to KRS 242.020, and said petition appearing to meet the requirements of said statute, it is hereby ordered that a special local-option election be held on February 18, 1986 in Nicholas County, Kentucky, at which time the following proposition will be submitted to the qualified voters of said County: "Are you in favor of the sale of alcoholic beverages in Nicholas County, Kentucky?"

Entered this 18th day of December, 1985.

s/Reese Smoot, Nicholas County Judge/Executive

STATE OF KENTUCKY
COUNTY OF NICHOLAS SCT:

I, Rose Scott, Clerk of Nicholas County, Kentucky certify that the foregoing is a true, complete and correct copy of the above order directing that a Local Option Election be held in Nicholas County, Kentucky, said order being recorded in County Judge/Executive Order Book 1, page 138. Given under my hand and seal of office this December 18, 1985.

s/Rose Scott, Clerk, Nicholas County, Kentucky

3-6-2tcltp

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POLE BUILDINGS: 36'x54' completely erected, entrance door, 18'x9' and slider included, many colors, $6,999. Other sizes available. BLITZ BUILDERS, INC. 1-800-628-4009 KY 1-800-792-3498 IN.

FOR SALE 1986 UNIVERSITY OF KENTUCKY WILDCAT SCROLL BASKETBALL CALENDAR $2.49 plus 50 cents handling and shipping charge. Lake Store, Hwy 421 N. Livermore, Ky. Phone 502-733-4444. Check, Visa or Master Charge.

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Financial aid still plentiful at Uk despite cutbacks

The Gramm-Rudman budget-cutting law may mean a decline of up to $1.5 million in financial aid funds available at the University of Kentucky, but students who need financial assistance can still get it, says a UK financial aid officer.

And to be eligible for the full range of assistance available, students should strictly adhere to an April 1 priority deadline for filing financial aid applications, said David Stockham, director of student financial aid.

The recent passage of the Gramm-Rudman bill will mean fewer federal dollars for scholarships, grants, work study and student loans, Stockham said.

In the 1985-86 academic year, students at UK and the community college system received more than $36 million dollars in financial aid. Unofficial UK estimates predict a 4.3 percent decrease in the 1986-87 year because of Gramm-Rudman.

Despite the cutbacks, students with the greatest financial need will be unaffected by the changes. Students with only marginal need — who had been receiving financial aid in the past — will be most likely to feel the cuts.

Merit scholarships will, for the most part, be unaffected by Gramm-Rudman because much of the funding for such scholarships comes from institutional and philanthropic sources. These scholarships are based on a student's achievement and do not take financial need into account.

Stockham said some changes are being made to guaranteed student loan program (in which the federal government backs loans from private lenders) such as an increase in origination fees which students must pay at the outset of the loan.

Other opportunities for financing a college education are still numerous, Stockham added. Part-time employment both on and off campus remains a popular option for many students.

Students planning to attend UK or the community colleges and who need financial aid should apply as soon as possible. Students applying after the April 1 priority deadline (or the fall semester) run the risk of not being eligible for some types of aid, Stockham said.

Each student is handled as an individual case, taking into account family size, income, expenses and the wide variety of financial aid options available.

About half the students attending UK and the community colleges now receive some form of financial aid. While that percentage may decline slightly in the coming years, Stockham said that should not discourage anyone from applying.

"If a student's need is great, we'll be able to help," he said.

USDA delays mailing notices

Kentucky Agriculture Commissioner David E. Boswell said that the United States Department of Agriculture has delayed further its mailing of loan delinquency notices to farmers across the country.

Boswell noted that the new 1985 federal farm bill has in it provisions to help the cooperative Farm Credit System cope with the economic distress of depressed farm conditions across the country. "This bill protects the Farm Credit System and with it the chance for consistent reasonable interest rates for farmer borrowers in the future," Commissioner Boswell said. "Meantime I believe most of us who understand the importance of agriculture to the quality of our lives would like to see an additional step or two taken for farmers whose operations may be salvageable."

Kentucky Afield

Weekly fishing report to resume

Most Kentucky anglers are familiar with the weekly fishing report produced by the Kentucky Department of Fish and Wildlife Resources and widely distributed throughout the state for publication in both daily and weekly newspapers and in regional tabloids.

Compiled from telephone conversations and radio dispatches from creel clerks and conservation officers in the field, the weekly fishing report originates from the central office of the Kentucky Department of Fish and Wildlife Resources in Frankfort. The two-page weekly fishing report is distributed to the media from mid-March through October.

In 1986, the weekly fishing report will resume publication on Monday, March 17, with a slightly changed format and the addition of Paintsville Lake to the list of 17 other major impoundments (those with over 1,000 surface acres). The report will include water conditions, plus a regional rundown of the lakes which currently are offering the best fishing opportunities.

Since the fishing report is compiled on Mondays, it is a report on water conditions and angler activity during the preceding weekend and not a forecast of the fishing in the near future. Admittedly the timing is of little help to the weekend angler, but it's no secret that during the summer months, the best fishing is usually during weekday mornings, afternoons and at night when our lakes are less crowded.

There are two main reasons why the weekly fishing report is compiled on Mondays, rather than later in the week. First of all, and probably most importantly, the information must be ready on Monday mornings because that's when the department-produced "Kentucky Afield" television show is taped at the Kentucky Educational Television (KET) studios in Lexington.

The second reason the report is issued on Mondays is that more people fish on the weekends, so creel clerks and conservation officers have a better opportunity to talk with as many anglers as possible and ascertain fishing patterns, the lures or bait most often used, and which species are "biting" best.

As any veteran angler knows, fishing conditions can change rapidly, and the weekly fishing report doesn't always reflect these changes due to time and space limitations. It is a subjective overview at best that only provides clues to what's happening. The weekly fishing report isn't meant to raise or lower angler expectations, it is simply a report on what the officer or creel clerk observed personally or was able to garner from conversations with trusted, reliable sources.

Above all, the department strives to make the weekly fishing report as informative as possible. Your suggestions and comments are welcomed. Correspondence should be addressed in care of: Weekly Fishing Report, Kentucky Dept. of Fish and Wildlife Resources, No. 1 Game Farm Road, Frankfort, Ky. 40601.

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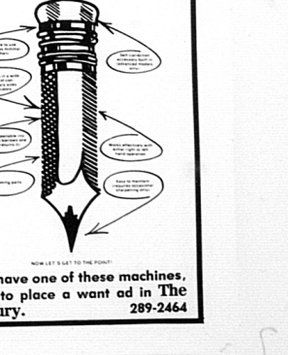

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