

Hamilton County LAW LIBRARY NEWS

Professional legal information, services, and education

December 2016

Insurance Liability, Risks, and Options in Augmented Reality: Catch 'Em All

By Kevin Doherty, Kevin Bruno and James S. Carter of Blank, Rome LLP. Reprinted with permission.

The rising Pokemon Go sensation has dramatically increased the popularity of augmented reality games, but it has also brought with it increased risks and liabilities for both game users and developers alike. For those who don't know, Pokemon Go is a mobile app that, although released just last month, has already been downloaded over 75 million times, generated more than \$75 million in revenue and boasts daily usage statistics that have exceeded Snapchat, Twitter, Instagram and Facebook. It's a location-based augmented reality game that allows users to partake in virtual scavenger hunts. Using the user's GPS and mobile camera, players are encouraged to explore their surroundings, seek out animated characters in real world places and "catch 'em all." The characters are overlaid on the player's screen and displayed as if they exist in reality. Unfortunately, distracted players on the hunt can end up wandering

(or driving) into places they shouldn't be, and becoming injured or injuring others as a result.

The number of Pokemon Go calamities increases daily, with incidents ranging from the mundane to the absurd and dangerous. In the few short weeks since its debut, users have experienced or caused numerous personal injuries, property damage and car accidents. Some users have become stuck in trees and locked in cemeteries, while more serious incidents involve users straying onto train tracks, falling off cliffs or entering restricted nuclear power facilities — all while on the hunt for Pokemon characters. Still others in pursuit of Pokemon have trespassed on private property, and some users have even been robbed after being targeted and led to specific locations using the app.

The question that lies ahead is

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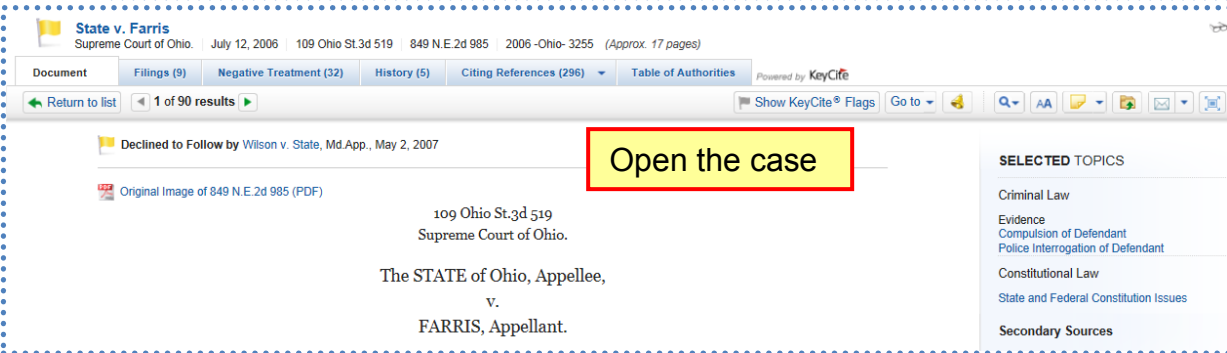
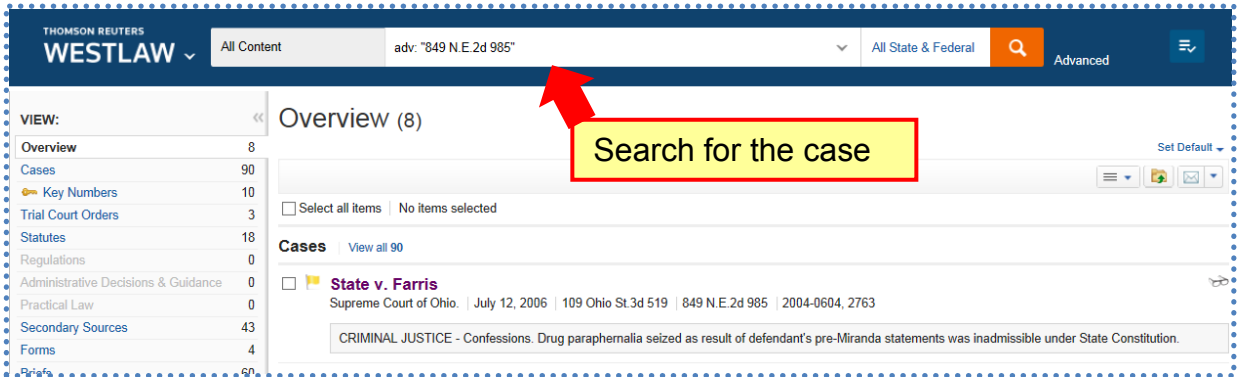
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<http://lawlibrary.hamilton-co.org>

Tech Tip: WestlawNext Keycite

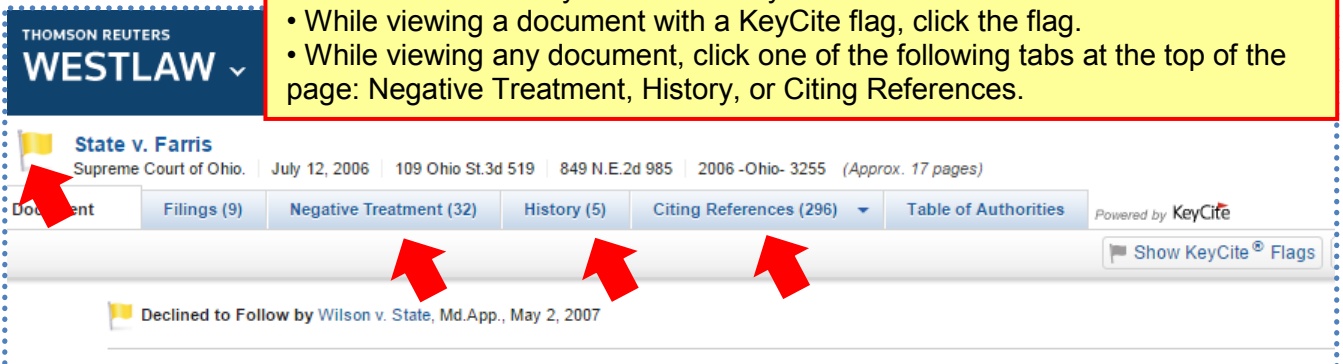
By: Julie Koehne, Systems Librarian

You can use KeyCite to instantly verify whether a case, statute, regulation, or administrative decision is still good law and find citing references to support your legal argument.



There are several ways to access KeyCite information:

- While viewing a document with a KeyCite flag, click the flag.
- While viewing any document, click one of the following tabs at the top of the page: Negative Treatment, History, or Citing References.



KEYCITE STATUS FLAGS FOR CASES



A red flag warns that the case or administrative decision is no longer good law for at least one of the points it contains.



A yellow flag warns that the case or administrative decision has some negative history, but has not been reversed or overruled.



A blue-striped flag warns that the case has been appealed to the U.S. Court of Appeals or the U.S. Supreme Court (excluding appeals originating from agencies).

The screenshot shows the KeyCite interface for the case *State v. Farris*. The document title is "State v. Farris" and it is from the Supreme Court of Ohio, dated July 12, 2006. The document ID is 109 Ohio St.3d 519. The interface includes tabs for "Document", "Filings (9)", "Negative Treatment (32)", "History (5)", "Citing References (296)", and "Table of Authorities". A red circle highlights the "Email" button in the top right corner. A yellow callout box with a red border contains the text: "To email, print, or download a report, select your method from the dropdown." A red arrow points from the callout box to the "Email" button.

The screenshot shows the "Email This Document" dialog box. It has three tabs: "Recipients", "Layout and Limits", and "Content to Append". The "Content to Append" tab is selected. The "To" field contains "reference@cms.hamilton-co.org". The "Format" dropdown is set to "PDF". The "Subject" field contains "State v. Farris". The "Email Note" field contains "optional notes". A yellow callout box with a red border contains the text: "If you choose to email, enter the email address, select the format, then select the 'Content to Append' tab." Red arrows point from the callout box to the "To" field, the "Format" dropdown, and the "Content to Append" tab. The "Email" and "Cancel" buttons are at the bottom.

The screenshot shows the "Email This Document" dialog box with the "Content to Append" tab selected. It displays a list of selection options under "KeyCite Lists" and "Other Related Information". A yellow callout box with a red border contains the text: "Select what to include in the report, then click the Email button." A red arrow points from the callout box to the "List of all 32 Negative Treatments" checkbox, which is checked. The "Email" and "Cancel" buttons are at the bottom.

For more information on Keycite go to:

http://static.legalsolutions.thomsonreuters.com/product_files/westlaw/wlawdoc/web/wlnkeyci.pdf

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whether and to what extent insurance coverage may be available to respond to the unfortunate and escalating losses we see from this augmented reality product, and others that are sure to follow. For those who use the app, or have been injured by those using it, several types of policies generally provide personal liability coverage, including your standard homeowner's insurance or renter's insurance policy, your auto insurance policy and your uninsured motorist coverage (which in many states is mandatory). But coverage isn't just for the app user.

Aspiring app developers and companies that develop, manufacture, market and distribute augmented reality apps or provide augmented reality services should not underestimate the value of appropriate insurance coverage. New companies focused on bringing their product to market in a competitive environment often overlook the value of insurance, in particular relatively new insurance products such as cybersecurity policies. Such coverages are particularly important when considering the fact that pop-up disclaimers and end-user license agreements that are common among mobile app developers don't always provide adequate protection, and don't necessarily apply to those injured by game players. In fact, a lawsuit has already been filed in Florida challenging the terms of Niantic Inc.'s license agreement (the company that developed Pokemon Go). And even if a licensing agreement is upheld in court, an augmented reality company may incur substantial costs defending itself.

It is therefore important for these types of game developers and companies to have sufficient liability coverage, which might be

available through commercial general liability policies and errors and omissions policies; however, the unique nature of many of these claims and corresponding losses might not fit squarely into the types of insurance policies we would typically turn to in these situations. Such policies should contain broad language that clearly cover bodily injury and property damage related to, among other things, the risks associated with augmented reality.

Companies that introduce augmented reality apps would also be wise to obtain additional coverage for cybersecurity due to the potential of such apps to collect vast troves of personal data and the prevalence of data breaches today. See *The Price of Pokemon Go*. As with most cases, whether coverage ultimately exists depends on the facts of the situation and the terms of your policy, so pay close attention and seek the assistance of qualified advisors when purchasing coverage to evaluate the risks, and help avoid potential gaps in coverage for augmented reality risks.

Whether Pokemon Go becomes a long-term success for Nintendo Co. remains to be seen. Nintendo stock soared earlier last month, only to plummet last week after realizations came to light that it didn't actually develop or publish the game (Niantic Inc. did; Nintendo only has a percentage interest in the company that markets and licenses the Pokemon franchise to outside developers). Nevertheless, the game's status is at an all-time high and augmented reality games are likely to become more prevalent, thus increasing the need for sufficient coverage. As augmented reality continues to rise in popularity, it will become increasingly important for policyholders to know what insurance options are available to them, and developers

of augmented reality products must be mindful of ensuring their business is adequately insured and protected.

Although it's too soon to know whether carriers will start to offer new coverages and/or apply exclusions specific to augmented reality, at least some specialty insurance options have already popped up. One company claims to offer "Pokedex insurance" (which is limited to the cost of one's phone), while a Russian bank just announced that it will provide "free insurance" to its customers who play the game (up to \$800). Whether or not these are mere marketing ploys looking to capitalize on the Pokemon frenzy remains to be seen. In any event, savvy policyholders, insurers and brokers will no doubt have their eye on the augmented reality space as it continues to grow in popularity.

For more info, contact [Kevin Bruno](#), [James S. Carter](#) or [Kevin R. Doherty](#).

Upcoming CLE

Free to subscribers; \$50 for non-subscribers
Registration is required.

To register, call 513.946.5300, email reference@cms.hamilton-co.org, or register via the website <http://lawlibrary.hamiltoncountyohio.gov/classes/calendar/>

CLE Replay Day-Thursday, December 15

Join us for a replay of the following previously recorded CLEs.

Legal Ethics & Access to Justice: Professional Conduct in Pro Bono Work

Speaker: Lauren Morrison
Thursday, December 15

8:30am-9:30am

Approved for 1.0 hour of professional conduct credit in Ohio and 1.0 hour of ethics credit in Kentucky

***Note-this program was previously presented at the Law Library on August 31, 2016**

Sixty Apps in Sixty Minutes: Mobile Apps for Productivity and Research

Speaker: Mary Jenkins

Thursday, December 15

9:45am-10:45am

Approved for 1.0 hour of general CLE credit in Ohio and Kentucky

***Note-this program was previously presented at the Law Library on February, 24, 2016**

Elder Law Challenges in Ohio: Nursing Homes, Hospice, Dementia and Payments

Speaker: Jim O'Reilly

Thursday, December 15

Noon-1pm

Approved for 1.0 hour of general CLE credit in Ohio and Kentucky

Ohio Legislative History

Speaker: Laura Dixon-Caldwell

Thursday, December 15

1:15pm-2:15pm

Approved for 1.0 hour of general CLE credit in Ohio and Kentucky



Message from the new Law Librarian & Director

A big thank you to everyone who has offered congratulations and words of encouragement as I take over as Law Librarian and Director. I am very excited to take on this new role and would be happy to chat with anyone who has questions or would just like to discuss library happenings. The library staff and I are committed to continuing to provide high quality service to our patrons and will be here to meet your research needs through this time of transition and beyond. Please feel free to stop by my office any time! *--Lauren Morrison*

Library Computers

Library computers in the lab and main room of the Law Library will shut down automatically at 4:25pm, effective November 28, 2016. Please see a library staff member if you have any questions about this.

Afternoon research requests

For patrons who utilize our reference services for research help and document delivery, please try to provide any requests to reference staff by 4pm if you'd like some action taken that day. We will do our best to provide you the information you need before closing. Requests submitted between 4 and 4:30pm will still be considered, but may not be completed until the following business day.

Subscriber Renewals for 2017

We will mail invoices for Hamilton County Law Library's 2017 enhanced services for subscribers in December. We hope that you will renew without a moment's hesitation, given the many services and resources offered by the Law Library. You are welcome to pay in December or wait until January – your choice. There is no rate increase for 2017.

New for this year: We are working on getting our credit card processing up and running and hope to have it launched in time for subscriber renewals. When you receive your invoice, please feel free to inquire about this option.

Our librarians appreciate your calls and emails for research support. Subscribers and county officials may request cases, chapters, Shepard's reports, forms, and more. We will send the items you need quickly via email or fax. This service is available to you at no additional charge. We also offer CLEs and training, video conferencing, meeting room use, loan of books, coffee, and low-cost photocopying. Our solo attorney and 100% firm subscribers benefit from off-site access to a number of legal information databases. Thanks for your continued use of the Law Library, whether on-site or from the convenience of your home or office. If you have questions about the invoice or about making the most of your investment, please contact [Lauren Morrison](#) or [Vanessa Reams](#).

Consumer Credit Resources

Law Library subscribers have access to a variety of resources on Consumer Credit. If you have questions, or have a suggestion for a title to add, contact the reference staff at reference@cms.hamilton-co.org or 513.946.5300

Anderson's Ohio consumer law manual
KFO230.A29 A53 2016

Anderson's Ohio creditor's rights manual
KFO220 .B68

Collection actions: defending consumers and their assets
KF1040.Z9 .S543 2014

Collection law from start to finish
KFO167.C6 C58 2014

Consumer banking and payments law: bank accounts, remittances, money orders, pre-paid cards, electronic benefit payments, electronic records and signatures
F1040.Z9 .S25 2013

Debt collector's handbook: collecting debts, finding assets, enforcing judgments, and beating your creditors
KF1024 .C66 2014

Fair credit reporting
KF1040.Z9 W83 2013

Fair debt collection
KF1040.Z9 W83 2013

National Consumer Law Center guide to

surviving debt
KF1040.Z9 L66 2013

Ohio consumer law
KFO230 .O35

Repossessions
KF1040.Z S541 2013

Student loan law
KF1040.Z9 L66 2015

Solve your money troubles
KF1501 .L46 2013

Truth in lending
KF1040.Z9 T46 2015

Online Resources Remote Access
Aspen Treatises on Fastcase
Consumer Finance Law Library:
Bankruptcy Abuse Prevention and
Consumer Protection Act of 2005: Law and
Practice
Dodd-Frank Wall Street Reform and
Consumer Protection Act: Law, Exp. and
Analysis

CCH IntelliConnect

Consumer Credit Guide Report Letters
What's New in the Mortgage Compliance
Guide
Consumer Credit Guide - Charts, Explanations, federal & state laws &...
Consumer Credit Legislative Developments
Smart Charts

EBSCO Legal Information

Credit Repair
How to Repair Your Credit Score Now

Upcoming Events:

December 15: CLE Replay Day-See inside for the full schedule.

Law Library Holidays

The Law Library will be closed the following days:

Monday, December 26 in honor of Christmas and Monday, January 2 in honor of New Year's Day.



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ADDRESS CORRECTION REQUESTED

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