APPENDIX

Brief excerpt for Kindred Nursing Centers Limited Partnership et al., *Kindred Nursing Centers Ltd. Partnership v. Clark*, 137 S.Ct. 1421 (2017) (No. 16-32), 2016 WL 7210375

Finally, in one of the two cases consolidated before the court below, *Wellner*, the majority identified a second reason for refusing to enforce the arbitration agreement. Even though the *Wellner* power of attorney authorized the attorney-in-fact to make contracts "'*in relation to* * * * *personal property*,'" Pet. App. 22a – and the majority "certainly agree[d]" that "personal injury claim[s]" and other "'choses-in-action are personal property,'" *id.* at 36a (quoting *Button* v. *Drake*, 195 S.W.2d 66, 69 (Ky. 1946)) – the majority nonetheless held the power to agree to arbitration outside the scope of the attorney-in-fact's authority. Instead, the majority said, an agreement to arbitrate the principal's legal claims somehow did not "relat[e] to" the claims, but rather solely to the principal's "constitutional right" to trial by jury, which is not "personal property." *Id.* at 37a.

This conclusion not only defies common sense, but also is preempted by the FAA, because the reasoning would not apply to any agreement other than an agreement to arbitrate. In light of Kentucky's long-standing recognition that causes of action are personal property (see *Button*, 195 S.W.2d at 69), it is unthinkable that Kentucky courts would interpret the phrase "contracts * * * in relation to * * * personal property" to exclude any other kind of agreement relating to an individual's legal claims. See Pet.App. 85a (Abramson, J., dissenting);

cf. *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982) (recognizing "that a cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause") (citing *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). In short, the decision below impermissibly discriminated against arbitration in its treatment of both the *Clark* and *Wellner* powers of attorney.