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The Louisville Accident Lawyer Journal

SEPTEMBER 2016 • VOLUME 9 OVER 30 YEARS EXPERIENCE

We gladly accept
and appreciate
your referrals

- We are counselors, not just attorneys
- We meet with our clients personally - not caseworkers
- We want you to understand how the legal system works as it applies to your case
- We will keep you informed and guide you every step of the way

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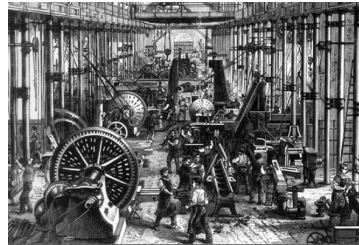
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Labor Day and Workers' Comp

Labor Day and modern Workers' Comp laws in this country owe their origin to the labor movement and rise of unions in the late 1800s following the Industrial Revolution.

The US Dept. of Labor's [website](#) says that Oregon was the first state to recognize Labor Day in 1887, followed by Colorado, Massachusetts, New Jersey and New York. By 1894, 23 states had adopted the holiday, and Congress made it a national holiday that same year.

Workers' comp, to my surprise, goes back to ancient times. According to Gregory Guyton in [A Brief History of Workers' Compensation](#), Iowa Orthopedic Journal, 1999, ancient Arab law provided that "the loss of a thumb was worth one-half the value of a finger. The loss of a penis however was compensated by the amount of the length lost." I'm not sure what that would be worth in today's dollars!



A typical 19th century factory

Oddly enough, Guyton writes that in 1871, Prussia became the first western nation to implement the first modern system of workers' compensation, in response to rising Marxist and socialist movements. Prussia's system became the basic model for other countries, including the United States.

However, workers' comp was a little slow to catch on in the USA until the 1906 publication of *The Jungle* by Upton Sinclair which depicted the horrors of the Chicago meat-packing industry. Beginning with Wisconsin in 1911, numerous states passed comprehensive "workmen's" comp laws in the 1910s. During that decade, a total of 43 states, including

Kentucky in 1914, adopted such laws.

Nowadays, all 50 states have workers' compensation laws. Like fingerprints, no two states are exactly alike. However, they all share the same basic principle: Employers in most businesses are required to provide certain benefits for on-the-job injuries regardless of fault. In exchange, the employee gives up the right to sue.

The fact that there are 50 different versions of workers' comp laws should tell you that there is no such thing as a perfect system, and Kentucky's is no exception. However, I have practiced workers' comp cases in Indiana, and have encountered comp laws in Ohio and Tennessee, and Kentucky's laws are generally more favorable for the employee than in those states.

One thing is for sure: working conditions and benefits for injured workers are far better than they were 100 years ago!

Happy Labor Day! -BDH

Why a Newsletter?

We hope you will find this newsletter to be entertaining and informative. We thought it would be a great way to stay in touch with people who have had a relationship with our firm. We care about the people we have helped and we want you to know that our relationship with you is very valuable to us, even if your case is over.

The reason you are receiving this newsletter is because you are an existing or past client of our firm, or you have contacted us about prospective representation. For this reason, this newsletter is not considered to be an "advertisement" under Kentucky Supreme Court Rule 3.130-7.02 (1)(h). (But this doesn't mean you can't give it to someone you

know!)

We hope to share a little more about who we are and what we do, and not just in our law practice. We would love to hear from you if you like our newsletter!

Our best to all of you!

Brad Harville Dana Skaggs

BRADLEY D. HARVILLE LAW OFFICES PLLC

20 Questions about Kentucky No-Fault

The key to understanding how the legal and medical system works in personal injury cases resulting from motor vehicle accidents in Kentucky.

Current Trends in Personal Injury Law

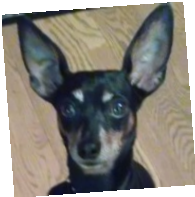
This month's column is about what I like to call the "UIM" trap. In previous editions of this newsletter, I've explained what "UIM" means. It is shorthand for "Underinsured Motorists Coverage" which is optional coverage under your auto policy that everyone should have. If you are injured in an auto accident, UIM coverage will compensate you for your damages over and above the at-fault driver's liability policy limit. This is important if you sustain serious injury and the other driver has, for example, only minimum limits liability coverage of \$25,000.

In Kentucky, the statute of limitations for making a claim on a written contract, including insurance contracts, is 15 years. However, it has become commonplace for insurance companies to try to include shortened statutes of limitations in their policy terms. A previous attempt by an auto insurer to insert a 1-year statute of limitations in the policy to assert a UIM claim was struck down several years ago by the Kentucky Court of Appeals as unreasonable.

However, in a case decided last March, *State Farm v. Riggs*, the Kentucky Supreme Court held that a

statute of limitations in the policy containing the same language as the statute of limitations for an auto accident injury (2 years from the accident or last "no-fault payment") was reasonable, and dismissed the insured's UIM claim because it wasn't filed until 3 years after the accident.

This is why at Harville Law Offices we want to identify any UIM coverage up front. If we have to file suit to go to Court, we make sure we include the UIM carrier as a co-defendant to avoid any statute of limitations problem.



Casey's Kentucky Trivia Question:
What is the oldest restaurant in Kentucky?

- A. Beaumont Inn (Harrodsburg)
- B. Talbott Tavern (Bardstown)
- C. Boone Tavern (Berea)
- D. Old Stone Inn (Simpsonville)

Be the first person to answer correctly by sending an e-mail to bdh@harvillelaw.com and we'll mail you a \$5 Starbucks gift card!

Advice Column - Tailgating Safety

Football season is here! And that means tailgating!

We've all seen the Allstate commercial where someone put his grill back in the car while the charcoal was still burning and the car blows up. Well, Allstate has posted these tips on its [website](#) for tailgating safety:

- 1) Respect food temperatures. Keep cold foods cold and hot foods insulated.
- 2) Use gas grills safely. Check for loose gas hoses and don't light

the grill with the lid shut!

- 3) Keep a fire extinguisher and a first aid kit handy.
- 4) Avoid too much sun. Use plenty of sunscreen and drink plenty of water.
- 5) Grill early and make sure you put your fire out before heading into the game (unlike the commercial!).
- 6) Dispose of trash properly. Keep the grounds clear for cars and your fellow fans.
- 7) Hide any valuables you leave

inside the car.

- 8) Designate a driver.
- 9) Do a walkaround to make sure your parked car is clear of debris before you start for home.
- 10) Take extra precautions in the parking lot. There are a lot of people and tight spaces. My bonus tip: Be extra careful driving home! Have you seen how many people drink at these games and then get in their cars and drive home? Be safe!

Favorite Pet of the Month

Meet Honor!

This handsome 1 year old German Shepherd mix is available for adoption at Barktown Rescue. A little shy at first, Honor needs a loving and patient family to teach him to be an inside dog. He and his siblings had a rough start in life, but things are looking up now!

If you want to add a pet to your family, may we suggest [Barktown Rescue](#)?

Dana Skaggs serves on the Board of Directors.

Brad and his family love pets, too!

If you want to tell us about your pet(s), send an e-mail to bdh@harvillelaw.com with a photo and we'll try to put this in a future issue!



Honor

Will My Insurance Rates Go Up?

In over 30 years of practicing personal injury auto accident cases, there's one question that I've been asked more than any other question: "If I make a claim, will my insurance rates go up?"

I've recently heard a certain TV lawyer's ad in which he gives his answer to this question. I like my answer better. Here is what I tell people:

First of all, if you are in an accident that wasn't your fault, state law prohibits the insurance company from raising your premium. That statute is [KRS 304.20-045](#), and it says that if someone believes an insurer has increased his or her premium in violation of this statute, they should notify the Ky. insurance commissioner in writing and the commissioner will conduct an investigation.

Second, since when did your insurance premium



not go up? My family's driving record has been spotless for years (knock on wood), but my premium still goes up every 6 months.

Third, the reason you - and the party at fault - buy insurance is so you will be compensated if you are injured in an accident. Why would you pass up a potential settlement that might be worth thousands of dollars out of fear that

your insurance company might raise your premium by a few bucks more than it already does?

There are very limited instances where you should not make a claim against your insurance company because it will raise your rates. If accident results in property damage only, and it amounts to no more than \$1,500-\$2,000 or so, then I would consider paying for the damage myself rather than turn it in under my collision coverage. But if it's any more than that, or if an accident involves an injury, I would make the claim very time.

Don't let them off the hook! That's why you pay for insurance! Make them pay for a change!

Stupid-Easy Recipe of the Month

*Great for
Tailgating!*

Easy Creamy Spinach Dip

High school and college football seasons are back in full swing! Here's an easy dip to bring to your tailgating party:

Ingredients:

- 6 ounces of fresh baby spinach
- 2 tablespoons chopped fresh chives (I've also used freeze dried)
- 1 small shallot, peeled
- 1 5-ounce can water chestnuts, rinsed and drained

- 1/2 cup reduced-fat cream cheese
- 1/2 cup low-fat cottage cheese
- 1/4 cup nonfat plain yogurt
- 1 tablespoon lemon juice
- 1/2 teaspoon salt
- Ground pepper, to taste

Directions:

In a blender or food processor, pulse water chestnuts and shallot until coarsely chopped. Add cream cheese, cottage cheese, yogurt, lemon juice, salt and pepper and pulse until just combined.

Add spinach and chives and pulse until well blended. Cover and refrigerate for up to 3 days. Stir before serving. Goes well with raw vegetables, or wheat, rye or pita crackers.



Middletown Fall Festival

The Middletown Family Fun Festival and Craft Show is coming up the weekend of September 9-10! Hours are 6 pm-10 pm on Friday September 9 and from 10 am-9 pm on Saturday September 10. This annual event in Historic Middletown is not to be missed!

The main event is the parade down Main Street which begins at 11:45 am on Saturday. Other attractions include live

music, vendor booths, strolling entertainers, a dog show, and more!

For more information, along with a complete schedule of all the festivities, visit the Festival website at: middletownfamilyfun.com.

The Festival has been a tradition in the Harville family for years. Come enjoy some small-town fun in the heart of the busy East end of Louisville!





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We want to help you secure the best possible outcome out of a difficult situation that you wish had never happened. If you have been injured, our goal is to obtain maximum recovery in the shortest amount of time it takes to get your case resolved.



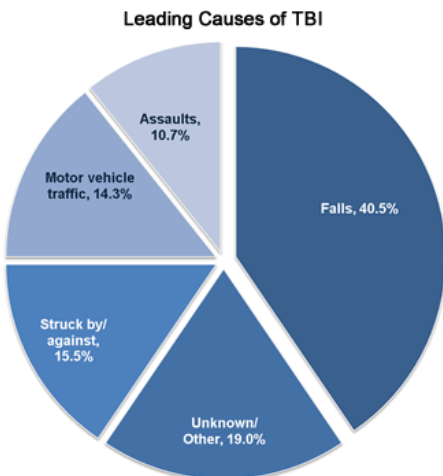
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Traumatic Brain Injuries

Football season is here, and there is sure to be more dialogue about concussions, which are a mild form of a Traumatic Brain Injury. Here are some facts about TBIs from the Centers for Disease Control and prevention [website](#):

The following chart from this website shows the leading causes of TBIs in the United States from 2006-2010:



As shown in this chart, falls were the leading cause of TBIs, accounting for 40% of all TBIs in the United States that resulted in an emergency room visit, hospitalization, or death. Falls disproportionately affect the youngest and oldest age groups.

Motor vehicle crashes were the third overall leading cause of TBIs (14%) among all age groups. However, when looking at just TBI-related deaths, motor vehicle crashes were the second leading cause of TBI-related deaths (26%) for 2006-2010.

As explained by the Mayo Clinic [website](#), the human brain has the consistency of gelatin. It's cushioned from everyday jolts and bumps by cerebrospinal fluid inside your skull. A violent blow or jolt to your head and neck or upper body can cause your brain to slide back and forth forcefully against the inner walls of your skull, causing a concussion or TBI. These injuries do not necessarily result in loss of consciousness, and MRI scans are often negative.

These injuries affect brain function, usually for a brief period, resulting in signs and symptoms of concussion. Usually the effects of a concussion improve over time.

Long-term effects of a concussion can be challenging. If symptoms persist, a referral to a neuropsychologist may be recommended. A neuropsychologist attempts to determine the loss of cognitive function from a TBI by administering a battery of cognitive tests that measure level of mental function and truthfulness. Since there is normally no pre-injury or baseline data, the neuropsychologist usually estimates the patient's pre-injury level of cognitive function based upon level of education and other social factors, in comparison to the person's current level of mental function according to the testing results.

If you suspect that you or someone you know may have suffered a concussion or TBI as a result of a car accident or other traumatic event, it is important to consult with a lawyer with expertise in this area. We have handled many such cases and are here to help.

This publication is intended to educate and entertain but it is not intended to be legal advice. Every case is different. The information in this newsletter may be freely copied and distributed as long as this newsletter is copied in its entirety.