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Harville  
 LAW OFFICES, PLLC



The Louisville Accident Lawyer Journal

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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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# What Makes a Good Case?

Typically the first thing people want to know when they first contact a lawyer about a personal injury case is if they have a good case. In the early stages it is usually too soon to tell how much a case may be worth in terms of settlement value or in front of a jury, but there are basically 3 primary factors that a lawyer considers in deciding whether a case is worth pursuing. Here they are:

### 1. Fault

Fault means that someone else is legally responsible for the event that causes the potential client's injury. In a car accident case, the attorney wants to know if someone other than the potential client is at fault. In a slip-and-fall, the attorney wants to determine whether the person or business responsible for the premises may be legally at fault.

No one has a case unless someone else is legally responsible. This is the basis of the American tort system. If someone is at fault for an accident that causes someone else's injury,

then the party at fault is responsible to compensate the injured person's damages. Which leads to ...

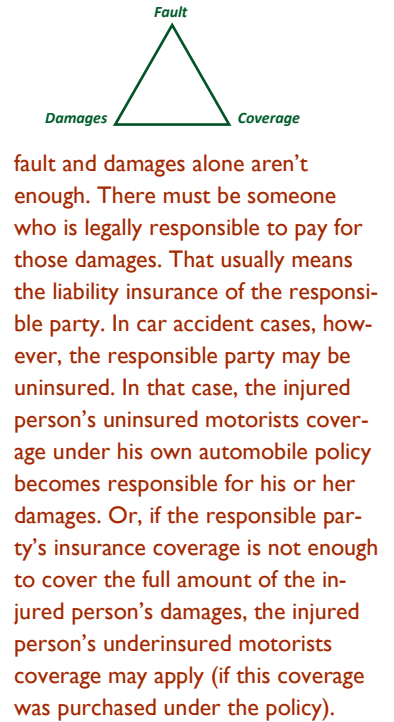
### 2. Damages

Just because a person may be at fault does not mean he or she is liable for damages. A jury will want to know if the accident was serious enough to cause an injury. In a car accident case, they will want to see how much property damage there was to the vehicles involved. They will want to know how soon the injured person went for treatment. They will want to know what sort of treatment the injured person received and for how long. They will want to know how much the injured person has incurred in medical bills and whether the injured person had to miss work. They will want to know if the injured person's injuries are permanent and may require future treatment.

If both fault and damages are present, then that leads to ...

### 3. Coverage

Any experienced attorney knows that



fault and damages alone aren't enough. There must be someone who is legally responsible to pay for those damages. That usually means the liability insurance of the responsible party. In car accident cases, however, the responsible party may be uninsured. In that case, the injured person's uninsured motorists coverage under his own automobile policy becomes responsible for his or her damages. Or, if the responsible party's insurance coverage is not enough to cover the full amount of the injured person's damages, the injured person's underinsured motorists coverage may apply (if this coverage was purchased under the policy).

Insurance coverage is very important in deciding whether an injured person has a good case. Otherwise, any judgment may be uncollectible. It is the third corner of the "Holy Triad" that every experienced injury attorney looks for in deciding whether a potential client has a good personal injury case.

- 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 - The New Driver's License Law

In another example of the federal government intruding into every aspect of our lives (pardon the commentary), Congress passed the "Real ID" Act in 2005.

Among other things, this law established new federal standards for state-issued driver's licenses and non-driver identification cards.

What this law really does is require a national identification card. Once the law is fully implemented, citizens will be unable to board a commercial airline or enter into federal buildings without the "national ID."

The original deadline for compliance was May 11, 2008. However, many states have put up a lot of resistance. For this reason, the feds have extended the deadline again and again. In March, 2011, the Department of Homeland Security pushed the effective date back to January, 2013.

Kentucky has been given additional extensions since then. In early 2016, the Ky. legislature passed a bill to comply with the law, but this was vetoed by incoming Gov. Bevin for fear of a tea party backlash. The feds then allowed Ky. another extension

until January 30, 2017 "or else." The Ky. state government then promised compliance, so the feds have again pushed the deadline back to June 6, 2017. Meanwhile, the Ky. legislature passed another bill which Gov. Bevin signed into law on March 22, 2017.

However, Ky. driver's license officials report that they will be unable to implement the requirements for the "enhanced" driver's license until 2019. They anticipate that the federal government will allow another extension until then. The new license will cost \$5 more than the current one.

## Advice Column - Liability Waivers

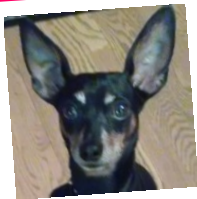
Schools will be letting out for summer break before you know it. Your kids or grandkids may be planning to attend summer camp or participate in other adventures such as ziplining, paintball, or laser tag.

These activities often require parents or guardians to sign liability waivers. A liability waiver and release is a contract that is intended to protect the business or organization from claims for bodily injuries sustained while participating in the activity.

Are these releases enforceable against consumers in Kentucky? Of course, the short answer is "maybe." In *Hargis v. Baize*, 168 S.W.3d 36 (Ky. 2005), the Kentucky Supreme Court stated that "the wording of the release must be so clear and understandable that an ordinarily prudent and knowledgeable party to it will know what he or she is contracting away; it must be unmistakable." The Court cited 4 factors necessary for a valid release: (1) it uses the word "negligence" to

clearly express intent to exonerate, (2) it indicates intent to release a party from liability caused by a person's own conduct, (3) the only reasonable construction is protection against negligence, and (4) the hazard was clearly contemplated by the agreement. Typically, the 4<sup>th</sup> factor is the most litigated.

It is difficult to detail every hazard that can result in an activity. If you or your family are injured in an activity, but aren't sure if you have a case, we can get a copy of the release and advise you accordingly.



Casey's Kentucky Trivia Question:  
What horse finished second in all 3 Triple Crown races?

- A. Sham
- B. Forego
- C. Alydar
- D. Kelso

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

## Favorite Pet of the Month

Meet Coconut! She is a beautiful 1 year old White Maine Coon kitty who loves attention!

Barktown Rescue helped Larue County officials rescue multiple dogs and cats from a hoarding situation and the rescue was fortunate to get this feline to rehome.

Coconut has been vetted and spayed, and is ready to start a new life with the right family. Her adoption fee is \$40.00.

Are you a pet lover? We are!

Dana Skaggs serves on the Board of Directors of [Barktown Rescue](http://BarktownRescue.com). 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](mailto:bdh@harvillelaw.com) with a photo and we'll try to put this in a future issue!



# What Does Workers' Comp Cover?

We have represented no telling how many workers' compensation clients over the years. I am often surprised at how little most people know about workers' comp law and what it covers. So usually the first thing I do is I go over the basic nuts and bolts of workers' compensation law so they will have a better understanding. Here it is: To begin with, workers' comp is social legislation. Employers in most businesses must provide certain benefits for on-the-job injuries regardless of fault. In exchange, the employee gives up the right to sue. That's a good thing, because even if an employee is injured through no fault of the employer, the employee is still entitled to benefits.

What are those benefits? They are three-fold: 1) The employer must pay for reasonable and necessary medical expenses for the "cure and relief" from the effects of the injury; 2) The employer must pay temporary total disability ("TTD") benefits at the rate of 2/3 of the employee's "average weekly wage" if the injured worker is off work for more than 7 days due to the injury; and, 3) The employer must also pay an award for permanent partial impairment (or total, if



the employee is completely disabled from the injury) according to a formula proscribed by statute, if the injury results in a percentage of permanent impairment under the 5th edition of the AMA Guides to the Evaluation of Permanent Impairment (which is a big green book in my office that I show to all my workers' comp clients).

The permanent impairment award is the one that your employer and its workers' compensation insurer don't want you to know about. The value of these awards can be very substantial depending on the injury and the circumstances. That's why you need to see a lawyer if you have a serious on-the-job injury.

## Stupid-Easy Recipe of the Month

### Bourbon Slushie

It's Derby Week, right? Have you ever tried to make a Mint Julep at home? They are difficult and not very tasty!

Try something much easier and delicious: My neighbor makes bourbon slushies which are delicious! Here's a recipe (adjust to taste):

- Special equipment: a large 1 gallon pitcher

- 2 cups bourbon (you don't need the real expensive stuff)
- 12 oz. can frozen orange juice concentrate
- 1 12 oz. can frozen lemonade concentrate
- 3 cups brewed sweet tea.

Simply dump all of the ingredients into the large pitcher and mix together.

It will store in your freezer for whenever you are ready to serve. Enjoy!



*Tastier and Easier than a Mint Julep!*

## Mother's Day Brunch

Just take a spin around Louisville's East End around noon on Mother's day (May 14!) and marvel at the crowded parking lots in front of all the restaurants.

Mother's Day has to be the busiest day of the year for Sunday brunch, doesn't it? What better way to treat your dear Mom than to take her out to a nice restaurant and gorge yourself on delicious food? After you're done you can barely walk back to the car! Then go home and take a nap!

Fortunately there are any number of great restaurants in the Middletown area that serve up a fabulous brunch. Of those I've actually visited, my favorites are: Bristol Bar



& Grille (several locations); Wild Eggs (several locations), The Village Anchor (in Anchorage), Gander (in the English Station shopping center off Shelbyville Road), and Napa River Grill (Westport Village). Some of these are pricier than others, so check around and make your reservations early!

Take your Mom out to Brunch on Mother's Day and tell her you love her! You'll be glad you did!



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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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# May is National Bike Safety Month



This article is excerpted from the [National Safety Council website](#):

Bicycling is one of the best ways to stay in shape, see the sights, save money on gas and reduce pollution. The benefits are well-known to cycling enthusiasts and local leaders nationwide who have created bike-friendly communities, complete with paths, special bicycle parking areas and other conveniences. National Bike Safety Month in May is just one way we celebrate our love to ride.

## The Risks

Bicyclists must take extra precautions when they ride. They often share the road with vehicles, which creates a host of hazards, but injuries can happen even on a designated path. Did you know in 2014, bicycles were associated with more injuries over all age groups than skateboards, trampolines, swimming pools and playground equipment combined? According to Injury Facts 2016, the statistical report on unintentional injuries created by

the National Safety Council, 510,905 people were treated in emergency rooms in 2014 after being injured riding a bicycle. The only sport resulting in more injuries overall was basketball, at 522,817. Football was third, at 396,457.

According to Injury Facts, about 1,000 deaths resulted from cyclists colliding with motor vehicles in 2014. With about 80 million bike riders sharing the road with millions of motorized vehicles, the importance of safety precautions in traffic cannot be overstated.

## Use Your Head, Protect Your Noggin

Cyclists who wear a helmet reduce their risk of head injury by an estimated 60% and brain injury by 58%. That statistic makes sense when you consider the first body part to fly forward in a collision is usually the head, and with nothing but skin and bone to protect the brain, the results can be fatal.

Helmets must meet federal safety standards and should fit securely. This National Highway Traffic Safety Administration video offers instruction on how to properly fit a helmet.

## Follow These Rules to Keep Safe:

- Get acquainted with traffic laws; cyclists must follow the same rules as motorists
  - Know your bike's capabilities
  - Ride single-file in the direction of traffic, and watch for opening car doors and other hazards
  - Use hand signals when turning and use extra care at intersections
  - Never hitch onto cars
  - Before entering traffic, stop and look left, right, left again and over your shoulder
  - Wear bright clothing and ride during the day
  - If night riding can't be avoided, wear reflective clothing
  - Make sure the bike is equipped with reflectors on the rear, front, pedals and spokes
  - A horn or bell and a rear-view mirror, as well as a bright headlight, also is recommended.
- Ride safe!