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## The Louisville Accident Lawyer Journal

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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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# The Ky. Constitution and Tort Reform

Most people know about the United States Constitution, but many people may not be aware that each of the 50 states also has its own constitution, including Kentucky. In fact, Kentucky has had 4 constitutions during its 225 year history: in 1792 (the year it became a state), 1799, 1850, and our current constitution, which was adopted in 1891.

Kentucky's state constitution, like its federal counterpart, forms the state government and preserves certain rights for people within its borders. Among these, section 54 of the Kentucky Constitution states that "the general assembly shall have no power to limit the amount to be recovered for injuries resulting in death or for injuries to person or property."

This particular section is the basis for the "jural rights doctrine," which is a legal concept unique to Kentucky jurisprudence. What this doctrine means is that anytime the legislature tries to change any laws affecting a person's tort rights to



The Kentucky State Capitol

assert a claim for property damage, personal injuries, or wrongful death, Kentucky courts have determined that any such change violates the Kentucky constitution. For example, in 1998, the Ky. Supreme Court struck down a statute that attempted to change the standard of proof for punitive damages claims, as that would have affected those rights as they existed in 1891. There are 3 more sections in the Ky. Constitution that prevent the legislature's ability to tinker with what goes on in the courts. Sections 27 and 28 divide "the powers of the government...into three distinct departments, each...a separate body of magistracy," and further specify that no "persons, being of one of those departments, shall exercise any power properly be-

longing to either of the others." In addition, section 116 vests exclusive jurisdiction in the Supreme Court to prescribe "rules of practice and procedure for the Court of Justice." Based on these 3 sections, the Ky. Supreme Court, in a 1995 decision, struck down a statute that required the courts to allow evidence of "collateral source payments" at trial, such as health insurance payments, as this was an unconstitutional infringement upon the judicial branch's power to decide what evidence should be admissible in the courts.

All of this is going to come up again because of the legislature's recent enactment of Medical Review Panels for anyone seeking to make a claim against a health care provider. In my opinion, this law amounts to nothing more than political grandstanding, and it's just a matter of time before it gets thrown out, too. With all of the problems facing our state, it makes me wonder why the legislature would waste taxpayer dollars by passing a bill that any Ky. lawyer should know has no chance for long-term survival. •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

A lot of lawyers say in their advertisements that you should never give a statement to an insurance company, but that's just not true. In fact, it can get your claim denied. It's better to hire a lawyer and have your lawyer present when you give your statement.

Recently, the Ky. Supreme Court rendered a decision that clarifies an insurance company's right to obtain a statement under oath from someone making a claim under an insurance policy.

In *State Farm v. Adams*, rendered August 24, 2017, the Court said

that an insurance company has the right to obtain a sworn statement from someone making a claim for uninsured motorist (UM) benefits as a "condition precedent" to coverage. In other words, the insurance company didn't have to pay anything unless the claimant first agreed to give a sworn statement.

The claimants in this case were victims of a hit-and-run driver who could not be identified. Previously the law said that the policyholder was required to give a sworn statement to make a claim for UM coverage, but the Court went one

step further and said this applied to anyone making a claim under the policy.

This case also said the insurance company had the right to take a sworn statement about claims for no-fault benefits under the policy that were being made along with the claims for UM coverage, apparently because these claims were blended together. Thus, this case also seems to broaden the rights of insurance companies to obtain statements from individuals making claims for no-fault benefits.



Casey's Kentucky Trivia Question:  
Who is the all-time best selling recording artist born in Kentucky?

- A. Dwight Yoakum
- B. Loretta Lynn
- C. Bill Monroe
- D. Miley Cyrus

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!

## Advice Column - Charity Giving

A recent article by Shelton Shaffer in the *Louisville Courier Journal* is worth repeating in this space. Many people are anxious to give to charity to help victims of Hurricane Harvey in Texas, but be careful! The Louisville Better Business Bureau has issued an advisory with these reminders to avoid scammers:

### Don't fall for copycats

Check the names of charities. A scammer may use a copycat name that is similar to a reputable organization.

### Be wary of emails and social media

Scammers may provide links to fake websites. It is always best to go straight to the charity's website instead.

### Don't provide personal information.

Legitimate charities may ask for your name or mailing address. But if someone asks for your social security number or requires a copy of your driver's license, don't bite.

### Do the homework.

Visit [give.org](http://give.org) to review the BBB Charity Report and to verify that a charity meets bureau standards for accountability.

### Watch for pressure tactics

Be leery of a charity that insists on immediate relief help. Legitimate charities will be glad to accept a donation later on.

Some reputable charities include the American Red Cross, the Salvation Army, and the Hurricane Harvey Relief Fund.



Remi

## Favorite Pet of the Month

Do you need some beagle love? This is 3 year-old Remi!

Remi is crate trained and does well with all humans- big and small, other dogs, and cats. She has made a real impact on the volunteers at the rescue because she is such a playful love bug!

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](mailto:bdh@harvillelaw.com) with a photo and we'll try to put this in a future issue!

# Flood Insurance - Do You Need It?

Do you have flood insurance on your home? It's a question worth asking in the wake of Hurricane Harvey in Texas.

Allstate's website says that only 12% of U.S. homeowners have flood insurance. However, if you live in a high risk flood zone, and you have a mortgage, chances are your lender requires you to have flood insurance.

According to the Federal Emergency Management Agency (FEMA), all 50 states have experienced floods in the last 5 years. There's no doubt it can happen here. I can think of 2 or 3 major floods since I moved to Louisville in 1988. In 1997, the entire bottom floor of the Galt House garage where I parked was completely underwater (fortunately my car wasn't in it!).

Here's what FEMA says about why you need flood insurance:



FACT: Floods are the nation's most common and costly natural disaster and cause millions of dollars in damage every year.

FACT: Homeowners and renters insurance does not typically cover flood damage.

FACT: Floods can happen anywhere--More than 20% of flood claims come from properties outside the high risk flood zone.

FACT: Flood insurance can pay regardless of whether or not there is a Presidential Disaster Declaration.

FACT: Most federal disaster assistance comes in the form of low-interest disaster loans from U.S. Small Business Administration (SBA) and you have to pay them back. FEMA offers disaster grants that don't need to be paid back, but this amount is often much less than what is needed to recover. A claim against your flood insurance policy could and often does, provide more funds for recovery than those you could qualify for from FEMA or the SBA--and you don't have to pay it back.

Flood insurance is worth thinking about. If you're not sure whether you have it, contact your agent to find out. I know I did after writing this article!

## Stupid-Easy Recipe of the Month

### Cucumber, Tomato and Onion Salad

One more summer recipe to eat up those veggies from the garden!

#### Ingredients:

- 1 pound cucumbers (about 2 cucumbers), peeled and thinly sliced
- 1 pint cherry tomatoes, halved
- 1/2 Vidalia onion, very thinly sliced
- 2 tablespoons chopped fresh parsley leaves

- 1 tablespoon apple cider vinegar
- 1 tablespoon olive oil
- Salt and freshly ground black pepper

#### Directions:

In a large serving bowl, toss together the cucumbers, cherry tomatoes, onion, parsley, vinegar, olive oil, salt, and pepper, to taste. Let the salad stand for 10 minutes before serving.



*One last summer dish before fall arrives!*

## Kentucky Bourbon Festival - September 11-17

The Kentucky Bourbon Festival has been held annually since 1992 in Dana's hometown of Bardstown, Ky.

Known as the "Bourbon Capital of the World," Bardstown hosts a weeklong festival



celebrating bourbon whiskey: the history of the spirit; how it is made; how and why it is aged; its impact on the economy; bourbon cocktails; cooking with bourbon; and anything else you might want to know about bourbon! What started off as a dinner and tasting for about 250 bourbon makers and aficionados is now a festival for all that brings thousands of people from across the nation and all over the world to Bardstown.

Not a bourbon drinker? That doesn't matter. There are festivities for all: cigars and jazz; balloon glow; crafts; barrel relays; antique and vintage cars; a formal gala; lunch and learns; main street shop displays and specials; and music on the lawn at Spalding Hall Friday-Sunday. Not all events have admission costs, but some require tickets. For more information, visit [www.kybourbonfestival.com](http://www.kybourbonfestival.com).



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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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## The Great Flood of 1937

Streets under feet of water. Submerged automobiles. People being rescued from rooftops by boats.

I'm talking about Houston, right?

Actually, all of these things happened right here in Louisville in January, 1937, 80 years ago.

My wife, Mary, and I can remember her father - who grew up in Garrard County in Central Kentucky - talking very vividly about it. People from all over the state came to rescue and give aid to the citizens of Louisville during the Great Flood.

How bad was it?

According to an article by Andrew Woolfson in the [Louisville Courier Journal](#), the Great Flood of 1937, which put 27 square miles of Louisville under water, was the widest and most destructive flood in U.S. history until Hurricane Harvey hit Houston this past month. Nearly 20 inches of rain fell in Louisville in January, 1937, a record for one month that still stands.



To quote directly from this article:

"More than 150 cities along the Ohio River - then unprotected by levees or floodwalls - were inundated, driving hundreds of thousands from their homes and contributing to 500 deaths. From Pittsburgh to Cairo, Illinois, the damage amounted to \$8.7 billion in today's money.

Louisville was hardest hit, with more than half the population of 308,245 evacuated. Nearly 50,000 homes were flooded, as were

250 of the city's 350 churches. In today's money, the damage total was \$1.7 billion.

Seventy percent of the city was under water, including virtually everything west of the Highlands. At Churchill Downs, the current surged over the rail at the finish line.

At some places, the water stood 20 feet deep. Workers on flatboats could barely pass under the railroad bridge at Broadway."

The Ohio River crested on January 27, 1937, hitting the highest flood mark on record, 57.1 feet.

Could it happen again? With the flood protections that have been added since 1937, "it would require twice as much rain in the same time period" according to local historian Rick Bell, who was quoted in an article by [WDRB.com](#). "It would have to be a perfect storm." But, as noted by local historian Tom Owen in that same article: "The weather we don't control, and there is no guarantee it couldn't happen again."