



**Harville**  
LAW OFFICES, PLLC

**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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# Taking On The 800 Pound Gorilla

If you have read past issues of my newsletter you know that for much of my career I have represented insurance companies. I still do, but whereas 10 years ago my practice was around 80% insurance defense/20% plaintiffs, these days it's more like 20% insurance defense/80% plaintiffs. That was something I wanted to do and I'm very happy that I was able to do it.

I don't hide the fact that I've done a lot of work for insurance companies from the injured people I represent. I think it's helpful for them to know they have a lawyer who understands how insurance companies work and how to get them to pay their top dollar.

On the flip side, however, I don't bring up the fact that I'm doing mostly plaintiffs' work these days to the insurance companies I still represent. Most of them know it anyway and it doesn't seem to bother them. They like the fact that I try to be reasonable and fair and help them resolve cases.



But there is one dirty little secret that I don't share with them: I take "bad faith" cases against insurance companies (other than my clients).

What is a "bad faith" case, you ask? A "bad faith" case means that an insurance company has breached its duty under Kentucky law to act in good faith toward its insured or toward a third-party claimant where liability is "reasonably clear." And Kentucky is one of just a few states that allow lawsuits against insurance companies for "bad faith." (Indiana? You can fuhgettaboutit.)

However, whenever I file a "bad faith" lawsuit against an insurance company, I know I'm in for a brawl. They are nasty. The insurance com-

panies take these lawsuits very personally and will fight them tooth and nail. It makes them look bad and any money they have to pay out in a "bad faith" case comes out of their bottom line which makes their shareholders very unhappy.

It also makes it tough that there is still a lot of gray area in Kentucky law about what is and what isn't a "bad faith" case. These cases tend to be very fact-specific. Consequently, insurance companies will file every motion they can to keep a "bad faith" case from getting in front of a jury, because they know a jury will nail them when they are caught treating somebody they owe like dirt. They will even go after the lawyer (i.e. yours truly) and say he has to be disqualified from representing his client because he might be a witness, even though all of the "bad faith" evidence is usually in their own files.

I don't care. I'm not afraid of the 800 pound Gorilla. If I think I've got a strong enough "bad faith" case, I will take him on every time. -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

# Current Trends in Personal Injury Law

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.

Occasionally, auto insurers obligated to pay no-fault (i.e. PIP) benefits deny payment for treatment by having an out-of-state physician "peer review" the expense and give an opinion that it is unnecessary, unreasonable or unrelated to the auto accident in question.

However, a recent opinion by the Ky. Court of Appeals purports to put an end to this practice. In *Houchens v. GEICO*, rendered September 9, 2016, the Court of Appeals stated that a "peer review" by an out-of-state physician was insufficient grounds to deny payment of no-fault benefits. The

Court held that that the only means available for a no-fault insurer to dispute an expense for payment is to file a petition in court for an IME ("independent medical examination") under KRS 304.39-270(1), and while a "peer review" report can serve to demonstrate "good cause" for an IME it cannot serve as a substitute for an IME to deny benefits.

This case is not yet final, which means GEICO can (and probably will) ask the Kentucky Supreme Court to review this ruling to see if it agrees with it. But if this ruling stands, it is a major setback to no-

fault insurers who wish to dispute treatment for payment. Those insurers which have denied payment based on an out-of-state "peer review" report could become subject to a lawsuit for denial of payment "without reasonable foundation" under KRS 304.39-235, which carries penalties of attorney's fees and 18% interest under KRS 304.39 -210(2). This is fertile ground for plaintiff's attorneys to pursue lawsuits against no-fault insurers for attempting to leave their insureds holding the bag for their medical expenses.



Casey's Kentucky Trivia Question:  
Who was Kentucky's first governor?

- A. Isaac Shelby
- B. James Harrod
- C. Henry Clay
- D. Simon Kenton

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!



Teddy

## Advice Column - Trick or Treat Safety

Kids, once upon a time there was a magazine called the Reader's Digest. Everyone you know who is at least 50 years old used to read it all the time.

Well, Readers Digest is now online! That's where I found these [Trick or Treat Safety tips](#):

### 1) Plan a route in advance.

You will definitely want to take into account the stamina of your trick-or-treater as well as your own.

### 2) Wear comfy shoes.

Try not to let the little girls wear heels

and make sure shoes are securely tied to avoid tripping in the dark.

### 3) Stay well lit.

No, Mom and Dad, this doesn't refer to drinking. Put reflective tape on your kids' costumes so cars can see them and take a flashlight to illuminate their path.

### 4) Make sure costumes are short.

You don't want your kids tripping over them.

### 5) Avoid Masks.

Good luck getting your kid to go along with this one, but masks make

it harder to see and breathe. Maybe they'll go for some face paint.

### 6) Avoid costumes with weapons as accessories.

But if your kid insists on toting an axe or a sword, make sure it's cardboard, rubber or plastic. Guns, of course, are an absolute no-no these days.

### 7) Check your child's candy.

Toss out anything that's not in its original wrapper or looks like it's been opened.

Happy Halloween!!!

## Favorite Pet of the Month

Halloween is more of a kitty-cat sort of holiday, don't you think? Casey just barks at everybody!

Well, meet Teddy, He is sweet, cuddly and would make a perfect lap cat! Last year, Barktown Rescue was asked to help Larue County officials rescue multiple dogs and

cats from a hoarding situation. Now, he's getting the care and affection he deserves at the Rescue, but longs for his own family. Good with other dogs and cats, if you would like to make Teddy a part of your family, fill out an application at

[www.barktownrescue.org](http://www.barktownrescue.org).

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!

# What Does it Mean When A Car is “Totaled”?

We hear about people being involved in accidents and that the cars were “totaled.”



Hopefully this hasn’t happened to you. But if it has, or if it does, here’s what “totaled” means.

In Kentucky, the determination of whether a car is “totaled” is based on a statute, [KRS 186A.520](#). This statute basically says that a car is “totaled” if the cost of repairs after an accident exceeds 75% of the retail value of the vehicle as set forth in the most current edition of the NADA Guides. There is also a regulation ([806 KAR 2:095\(7\)](#)) that allows

insurers to use “any source for determining statistically valid fair market values” besides the NADA Guides, such as appraisal services.

If you think through this definition you will realize that it takes a lot less damage to total out older cars, which have lower fair market value, than newer cars, which have higher fair market values.

For example, we’ve had a case where a heavily-damaged vehicle required \$14,000 in repairs, but because it was a late model vehicle with fair market value of over \$20,000, that vehicle was not considered totaled. Conversely, repair costs of only \$2,000 for minor damage might be enough to total out a car that is more than 10 -15 years old, depending on the make and model.

If you have an older car that is totaled, and you still have collision insurance on it that will pay for the loss, or if an accident is the fault of another driver whose insurer will pay for the loss, the problem is that it will cost much more to buy a replacement vehicle than the fair market value of a totaled older car.

We frequently get calls from people in this situation and unfortunately we have to tell them that the fair market value is all that the insurer is liable for. You cannot recover additional damages unless you are also injured as a result of an accident. If so, it is important to seek medical attention right away. Such injuries can get worse in the days following an accident.

## Stupid-Easy Recipe of the Month

### Squashed Frogs

Turn up the fun at your Halloween party with a roadkill treat! One of my son’s favorite recipes!

#### Ingredients:

- 2 tablespoons margarine or butter
- 10 ounces marshmallows
- 5 cups corn flakes
- 1/2 teaspoon vanilla
- 2 teaspoons green food coloring
- plain M&M’s plain chocolate candy

#### Directions:

1. Melt margarine/butter in large saucepan.
2. Add marshmallows and cook over low heat, stirring constantly until melted and mixture is syrupy.
3. Remove from heat.
4. Add vanilla and food coloring.
5. Mix.
6. Add corn flakes and M&M’s and mix until well coated and bright green.
7. Drop from a tablespoon onto a piece of wax paper and allow frogs to cool.

My son likes to use chocolate M&M’s to give the frogs eyes and adds a little peanut butter! Enjoy!



*Nothing like some delicious roadkill for Halloween!*

## The Bloodiest Day in Kentucky’s History

The Perryville Battlefield holds its annual reenactment on October 8 and 9, 154 years from the date of the actual battle on October 8, 1862.

If you’ve never been to Perryville, it is about a 1 1/2 drive from Louisville. You will be surprised at how small the town is, and how open the battlefield is to walk around and imagine the carnage that took place there. You can walk from one historical marker to the next to



visualize how the battle unfolded. In fact, it is one of the best-preserved and most open to public access of any Civil War battlefield in the USA. 1,422 soldiers were killed in the battle, and 5,534 were wounded. The battlefield and nearby buildings are reportedly haunted, and the TV show “Ghost Adventures” has filmed a couple of episodes there. For more information, check out [www.perryvillebattlefield.org](http://www.perryvillebattlefield.org).



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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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## October is Breast Cancer Awareness Month

The American Cancer Society came out with the most recent breast cancer detection guidelines in October of last year. They are divided into Women at Average Risk and Women at Higher Risk.

Here are the guidelines from the [ACS's website](http://ACS's website):

### **Women at average risk:**

**Women ages 40 to 44** should have the choice to start annual breast cancer screening with mammograms if they wish to do so. The risks of screening as well as the potential benefits should be considered.

**Women age 45 to 54** should get mammograms every year.

**Women age 55 and older** should switch to mammograms every 2 years, or have the choice to continue yearly screening.

Screening should continue as long as a woman is in good health and is expected to live 10 more years or longer.

### **Women at Higher Risk:**

**Women who are at high risk for breast cancer based on certain factors** should get an MRI and a mammogram every year. This includes women who:

- Have a lifetime risk of breast cancer of about 20% to 25% or greater, according to risk assessment tools that are based mainly on family history (such as the Claus model – see below)
- Have a known *BRCA1* or *BRCA2* gene mutation
- Have a first-degree relative (parent, brother, sister, or child) with a *BRCA1* or *BRCA2* gene mutation, and have not had genetic testing themselves
- Had radiation therapy to the chest when they were between the ages of 10 and 30 years
- Have Li-Fraumeni syndrome, Cowden syndrome, or Bannayan-Riley-Ruvalcaba syndrome, or have first-degree relatives with

one of these syndromes.

**All women** should be familiar with the known benefits, limitations, and potential harms associated with breast cancer screening. They should also be familiar with how their breasts normally look and feel and report any changes to a health care provider right away.

The website says that “Most doctors feel that early detection tests for breast cancer help save thousands of lives each year, and that many more lives could be saved if even more women and their health care providers took advantage of these tests.”

Women, take heed of these guidelines. Do it for your loved ones (who love you back!) and do it for yourself!

