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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  
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- 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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# Nursing Homes and Medicaid



I really haven't tackled the topic of Medicaid before in this newsletter, but I thought I should share my own experience to help any of you who may benefit from it.

In March, 2007, my mother, a 78-year-old widow at that time, began experiencing symptoms of dementia. After my sister and I took turns trying to care for her in our own homes, it became clear by that summer that she needed to go into assisted living.

We were fortunate. My mother had full retirement through the Kentucky Teachers' Retirement System (KTRS). She also owned her own home and a single-family rental home that she inherited from her second husband.

Faced with this reality, the first thing we did was to deed her two real estate properties over to her three children - my brother, sister, and myself. We did this to preserve those properties against the eventuality that at some point she

might need to go on Medicaid. Medicaid is need-based, and it has a 5-year "lookback" period for any assets that could have covered the cost of her long-term care. If an individual owned any such assets within that 5-year period, then Medicaid will impose a penalty adding to the length of time before the individual can become Medicaid-eligible.

In my mother's case, this meant that she had to "self-pay" for 5 years before she could become Medicaid-eligible without penalty. As her condition deteriorated, she ended up in three long-term facilities over the next 8 years, the last year being in a facility that was covered by Medicaid. Until then, her pension and rental income from her two houses were not enough to keep up with the cost of her long-term care. Due to her pension income, I also had to consult with an elder law attorney to set up something called a "Qualifying Income Trust" ("QIT") for her to become Medicaid-eligible.

I also had to fill out the necessary paperwork and travel to the Medicaid office in Lexington to complete the eligibility process.

All told, Medicaid paid for slightly less than \$30,000 for my mother's last year of her care. After she passed away, they sent a letter requesting repayment, but because I was able to establish that she passed away with no assets this claim was waived.

Throughout this time, it was evident that despite the high cost of care, the standard of care in these nursing homes is not what it should be. On one occasion a nurse's aide was assisting my mother back to her room, when my mother fell and broke her hip. I considered pursuing the claim, but I decided not to because I thought any claim would be swallowed up by Medicaid. That's not necessarily the case, and if I had to do it over again I might go about it differently.

For those of you dealing with similar situations, I very much feel for you. I am here to help. • 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 - Bicycle Safety

A new law was passed in the last legislative session pertaining to bicycle safety which became effective on July 14. KRS 189.340, Overtaking Vehicles, was amended to add a new section (2), which reads:

(2) (a) Vehicles overtaking a bicycle proceeding in the same direction shall: 1. If there is more than one (1) lane for traffic proceeding in the same direction, move the vehicle to the immediate left, if the lane is available and moving in the lane is reasonably safe; or 2. If there is only one (1) lane for traffic proceeding in the same

direction, pass to the left of the bicycle at a distance of not less than three (3) feet between any portion of the vehicle and the bicycle and maintain that distance until safely past the overtaken bicycle. If space on the roadway is not available to have a minimum distance of three (3) feet between the vehicle and the bicycle, then the driver of the passing vehicle shall use reasonable caution in passing the bicyclist.

According to the League of American Bicyclists, Kentucky is the 30th state to adopt the safe

passing law.

Theoretically, a violation of this new subsection is a citable offense. KRS 189.990 provides that any violation is subject to a fine of not less than \$20 or more than \$100. More significantly, this amendment could now play a role in a personal injury case involving a bicycle. A collision between a passing automobile and a bicycle would logically seem to entail some violation of this amendment, and give the right to have the Court instruct the jury that the automobile driver was negligent *per se* and is liable as a matter of law.

# Advice Column - Back to School Study Tips

From [princetonreview.com](http://princetonreview.com), here are some back-to-school study tips:

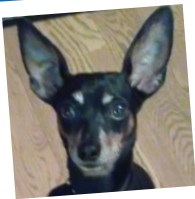
1. You don't need one study space. Sometimes a change of scenery can help your brain retain information better.
2. Track more than homework in your school planner. Make sure you're marking your extracurricular, work, and social commitments, too.
3. Start small. If you've got a big assignment looming, stay motivated by completing a piece of the project a little bit at a time.
4. School supplies (alone) don't

make you organized. Come up with a system and keep to it.

5. Get into a routine. When will you make the time to do your homework every day?
6. Learn how to create a distraction-free zone.
7. Keep it real. When you're looking at the homework you have to get done tonight, be realistic about how long it will actually take to plan how to spend your time.
8. Use class time wisely. Is your teacher finished lecturing, but you still have 10 minutes of class left? Get a jump on some homework

while it's still fresh in your mind.

9. Look over your notes each night to make sure you've got it.
10. Study a little every day.
11. Don't let a bad grade keep you down. Take proactive steps by checking your grades regularly online and getting a tutor if you need one.
12. Make a friend in every class. Find a few people you can contact from each of your classes if you have a homework question or had to miss class (and do the same for them!). Then when it comes time to study for exams, you'll already have a study group.



Casey's Kentucky Trivia Question:  
Zerelda James, mother of outlaws Frank and Jesse James, was born in what Ky. county?

- A. Woodford
- B. Pendleton
- C. Calloway
- D. Logan

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 Pets - Dippin' Dogs!

Harville Law Offices is once again proud to be a sponsor of Dippin' Dogs in Bardstown, KY, and encourages our dog owning family, friends, and clients to attend the 7th Annual Dippin' Dogs & Chopper Slam Jump Fest August 17-18, 2018! As the City of Bardstown drains its public pools for the summer, it sets aside this weekend for owners to bring their dogs to swim in the large pool!

Registration and admission fees are very reasonable. As long as your dog is up to date on its shots, it is welcome to attend. Fun for families and dogs alike, 100% of proceeds from Dippin' Dogs benefit 4 local animal charities. To find out more about this event, go to [www.dippindogs.org](http://www.dippindogs.org).

Are you a pet lover? We are!

Dana Skaggs serves on the Board of Directors of [Barktown Rescue](http://BarktownRescue.org). 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!



Take your dog for a swim!

# Underinsured Motorists Coverage - Real or Fiction?

I talk a lot about Underinsured Motorist (UIM) Coverage in this newsletter, because it is not very well understood by most people. It is relatively inexpensive coverage that provides important protection if you or your family are ever seriously injured in a car wreck due to another driver's fault.

Just to rehash, UIM coverage in your auto policy will pay for your damages (medical bills, lost wages, pain and suffering) to the extent that they exceed the amount of liability coverage available for the other driver who caused the wreck. This is important because there are a lot of bad drivers out there who only have minimum liability coverage of \$25,000. If you were to suffer a broken bone or herniated disc as a result of a crash, then the value of your injury claim could far exceed the other

General Policy Coverages			
Uninsured Motorists	\$300,000 each person/\$500,000 each accident	\$20.60	
Underinsured Motorists	\$300,000 each person/\$500,000 each accident	\$80.50	

driver's minimum limits.

Unfortunately, UIM coverage is not a mandatory coverage, so a lot of folks will not purchase it just to save a few bucks off of their insurance premium, even though this coverage could mean tens of thousands of dollars to them if they ever become a victim of a serious car crash.

There is also a difference between UIM coverage under a Kentucky automobile policy, as opposed to UIM coverage in policies issued in neighboring states such as Indiana and Illinois. In Kentucky, what you get what you pay for. If you buy \$25,000, \$50,000, \$100,000 or more in UIM coverage - it is normally equal to the amount of

your liability limit - then that's how much coverage is available to you.

In Indiana and Illinois, however, that is not the case. Their insurance laws, unlike Kentucky's, permit UIM coverage to be "set off" against the other driver's liability coverage, which means you could be paying for no coverage at all. For example, if the other driver has \$50,000 in liability coverage, and your UIM coverage is \$50,000, the other driver's liability coverage is "set off" against your UIM coverage, reducing it to zero! So, if you are in one of these states, a word to the wise would be to increase your UIM limits as much as possible to avoid having this coverage stripped away by the other driver's liability coverage.

## Stupid-Easy Recipe of the Month

### Blue Hawaiian

Hate to say it, but summer is winding down (sob!),

Here's a classic tropical drink recipe for you to raise a toast in appreciation for the beautiful summer we've enjoyed this year. Some recipes call for coconut crème, but I prefer a lighter version with coconut rum:

#### Ingredients (serves 4):

- 3 oz coconut rum

- 3 oz light rum
- 2 oz Blue Curacao liqueur
- 12 oz pineapple juice
- 4 oz sweet and sour mix

#### Instructions:

Combine ingredients and mix well. If serving with ice, mix the ingredients in a blender. Serve in a tall glass. Garnish with a brightly colored umbrella or a slice of pineapple. Enjoy!



Raise a toast to the tropics!

## Big Bone Lick State Park

OK, how many times have you driven along I-75/I-71 in Northern Ky. and seen the signs for Big Bone Lick State Park? You must go!

Big Bone Lick, as the entrance sign says, is the birthplace of modern paleontology. It was a Native American hunting ground when it was discovered by Europeans in the mid-1700s. At first they did not know if the ancient mammals whose bones were found there were still in existence.

Dinosaurs had not yet been discovered, and



My selfie at Big Bone Lick!

extinction was not widely understood.

Thomas Jefferson was particularly interested in Big Bone Lick. In 1803, before Lewis and Clark's famous expedition, Jefferson asked Lewis to investigate the site. Lewis visited the lick and tried to ship a large tusk and two teeth to Jefferson, but the boat sank in the Mississippi River. If you go, check out the park hours on their [website](#). Be sure to buy some "Big Bone Lick" T-shirts!



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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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## Why Don't School Buses Have Seat Belts?

"Buckle up" is always the first thing we tell our children when they get inside a car. Except they can't do it when they ride a school bus in Kentucky. Why is that?

Only eight states (Arkansas, California, Florida, Louisiana, Nevada, New Jersey, New York, and Texas) currently require seat belts on school buses, and some of those states only require them on newer buses. Kentucky's [2018 Minimum Specifications For School Buses](#) requires only that the seats for the children must be "seat belt ready."

According to [wonderopolis.org](http://wonderopolis.org), a cost-benefit analysis by National Highway Traffic Safety Administration (NHTSA) has concluded that the cost of adding seat belts to school buses outweighs any potential benefits. Buses are large and heavy, sit high off the ground, and are remarkably safe.

Another article from [Stanford Children's Health](#) points out that modern buses provide "compartmentalization" so that seat belts are not needed. New bus seats are higher, wider and thicker, and all metal surfaces are covered



with padding, which absorb energy in a crash. The seat structure allows it to bend forward when a child is thrown against it. Seats are also positioned no more than two feet apart, which limits the distance a child moves during a crash.

However, as you might expect, there is a growing movement that seat belts should be installed in all school buses. In May of this year, [ABC news](#) reported that after conducting a special investigation of two deadly school bus crashes in 2016, the National Transportation Safety Board (NTSB) recommended for the first time that all school buses should be equipped with lap and shoulder belts, contrary to the NHTSA's position that seat belts are not absolutely necessary. In response, the NHTSA stated that it is "currently planning research on the use and implications of seat belts on school buses, which will help inform

future agency actions and activities."

One industry supplier of lap and shoulder belts for school buses, IMMI, advocates for seat belts in school buses on its [website](#). Although this company has an economic interest involved, the videos on its website make some dramatic points. It refutes the argument that "compartmentalization" is safe by pointing out that it provides no protection in a rollover situation, in which children can be catapulted from their seats. Another unexpected benefit of seat belts on school buses is that it improves student conduct. Students must remain belted in their seats instead of roaming around the bus and creating discipline problems (those of us who rode school buses know exactly what this means!). It also says the added cost of putting seat belts in school buses is only about 10¢ per student. I'm sure that almost all parents would gladly pay an extra 10¢ for each of their children to have seat belts on school buses if they offered any additional safety benefit at all, which seems inarguable.