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Harville
LAW OFFICES, PLLC

The Louisville Accident Lawyer Journal

NOVEMBER 2017 • VOLUME 11 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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Yes, It Happened to Me ...

For 32 years, I've given people advice on what to do if they are involved in a car accident. I never thought it could happen to me.

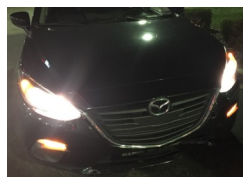
Well, that changed a couple of weeks ago. My wife and I had gone out to dinner, and were heading home down Shelbyville Road past the Wal-Mart in Middletown. As we went through the light, a couple of cars had slowed down in front of the Thornton's so I slowed down as well. They started to pick up speed again, and when I did, too, ... Wham! We were hit hard by a car that slammed into my rear bumper. It was a good thing that the car ahead of me and I were still moving, or the impact would have been worse and knocked me into that car.

I got out of my car to look at the damage, expecting my rear bumper to be caved in. To my surprise, it was mostly intact. (Those 2006 Infiniti G35 rear bumpers are tough!) Then the young man who

hit me got out of his car and said we should move the

cars out of the road, so we went and parked in the Thornton's parking lot.

This young man, who was the same age as my older son, then provided an example of how not to act after you've just slammed into the rear of someone else's vehicle. He looked at my bumper and pronounced there was no damage (my bumper was bent). He then asked my wife and I if we were all right, and we said we weren't sure (we were shook up). He then threw a fit, saying we were being "d**ks to him" and "a*****s to him," I guess because we didn't say everything was OK. The front of his car was visibly damaged, but when he said the damage was already there, I asked "this isn't your first time?" I could have kept that to myself, but he had a really poor attitude.



The car that hit me

After that, he didn't say anything more until the police officer showed up. Then he tried to argue it wasn't his fault. Even my wife, who is my worst driving critic, wasn't buying that one. He was obviously looking at his cell phone and not paying any attention to traffic in front of him.

So, I'm here to report that despite all the advice I've given over the years, it really is hard to think of what you're supposed to do when you find yourself in this situation. I was a little sore for 2-3 days, but I didn't get checked out and now I'm fine. My wife says she's still having some stiffness, but she won't go see anyone about it. I got an estimate on my car, and fortunately it isn't enough to total it out.

I will say this for this experience: I can now relate a little more to what all of my car accident clients have been through. My accident was a hard hit, but nothing compared to what most of you have experienced. It is very distressing, to say the least.

• 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

Well, I hate to say "I told you so," but ... I told you so.

Two months ago, in my September issue, I talked about tort reform and the Kentucky Constitution. Toward the end of that column, I discussed the Ky. Legislature's recent enactment of "Medical Review Panels" to review any claims against health care providers, and how that was destined to get thrown out by the courts.

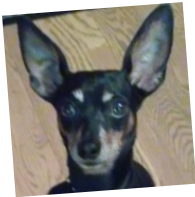
Well, it didn't take long. On October 30, the Franklin Circuit Court issued a 28-page opinion finding that the Medical Review Panel Act

violated the Kentucky Constitution, primarily for the reasons I discussed in my column.

You may have seen the Courier Journal article on October 31 that talked about this ruling. Naturally, the politicians who supported this bill vow to appeal the decision, but they won't have any better luck in the appeals courts, unless the judges are willing to ignore the Kentucky Constitution and the cases that have interpreted it for the last 100 years.

What the Courier-Journal article didn't make clear is that not only

did the Franklin Circuit Court find that the law was unconstitutional, it issued an injunction against the Cabinet for Families and Human Services (CFHS) from enforcing the Act. That means that the CFHS cannot allow medical review panels to continue hearing any current or future cases. We have a case right now in which the Defendants have been trying to force the Medical Review Panel Act down our throats, but this decision should put a stop to that until the Ky. Supreme Court has the last word.



Casey's Kentucky Trivia Question:
Who was the only US President born in Kentucky?

- A. Zachary Taylor
- B. Henry Clay
- C. Abraham Lincoln
- D. Andrew Jackson

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!



Sawyer

Advice Column - Thanksgiving Driving Tips

From consumerreports.org, here are some Thanksgiving driving tips:

1. Fuel up. Don't head out on a long trip without a full tank of gas. Also check fluids and tire pressures before you leave.
2. Be prepared. Bring an emergency kit and extra snacks.
3. Pack smart. Make sure your gear is packed properly and will not be a hazard if you stop short.
4. Track it. A portable GPS navigation system will help you get where you're going.
5. Kid prep. If you're driving with

- kids, make sure you pack enough snacks, water, games, videos/DVDs, and music to keep them occupied during your journey.
6. Traveling with pets. Secure your pets with harnesses and seat belts, or by placing them in a crate. Bring water, food, toys, leash, and clean-up supplies.
7. Be patient. Expect to hit traffic. It may make sense to drive late at night or early in the morning to avoid the rush. A GPS device with traffic information can help you navigate around congestion.
8. Don't be distracted. Cell

phones and driving don't mix.

9. Buckle up. Always use your seat belt, make sure children are properly secured in a car seat and are seated in the rear seats if they are under 13.

10. Watch for weather. If you're driving in wintry weather, make sure you clear off the snow and ice for better visibility. Allow for longer braking distances, and reduce your speed.

11. Keep control. If you stay calm and be prepared you can get through any challenge.

Be safe and have a happy Thanksgiving!

Favorite Pet of the Month

Meet Sawyer – a 3-year-old Great Dane/Boxer mix. Sawyer is a shy boy, and needs a little time to warm up to you. He would probably do best in a forever home in which he is the only dog. Sawyer is house trained and knows basic manners. Because of his size and activity level, he would make a

great running companion.

For more information, check out www.barktownrescue.org.

If you want to add a pet to your family, may we suggest [Barktown Rescue](http://BarktownRescue.org)?

Dana Skaggs serves on the Board of Directors.

Brad and his family love pets, too!

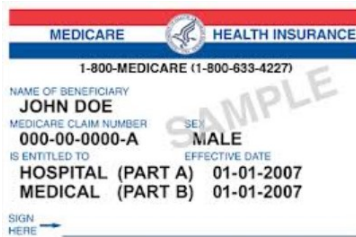
If you want to tell us about your pet(s), send an e-mail to bdh@harvillelaw.com with a photo and we'll try to put this in a future issue!

Medicare Subrogation

One of the most horrible pieces of legislation in my lifetime was

signed into law by George W. Bush in 2007. The Medicare, Medicaid, and SCHIP Extension Act created reporting requirements for reimbursement of Medicare payments in the event of a personal injury recovery by anyone covered by Medicare or who may be covered by Medicare.

This terrible law made it more difficult for claimants, plaintiffs, and defendants to settle personal injury claims in every case across the



nation in which Medicare might be involved. It spawned the dreadful Benefits Coordination & Recovery Center (BCRC), located in Oklahoma City, Oklahoma, which is responsible for recovery of all Medicare benefits paid in personal injury claims, and has taken bloated and incompetent federal government bureaucracies to new lows.

The law sent chills throughout insurers across the nation, who feared exorbitant fines if they paid a settlement and left Medicare unprotected. Law firms appeared that did nothing but specialize in Medicare subrogation. Settlement releases morphed into multipage legal epistles.

Medicare subrogation is now part of the landscape, but it is just as loathsome as ever.

Here's how it works: When you have a personal injury case involving a Medicare beneficiary, you have to notify the BCRC of the claim. They will then mail you a printout of what they claim they've paid. Usually, much of what they claim has nothing to do with the personal injury case. Since Medicare recipients are usually elderly, the BCRC will claim anything it can, regardless of whether it's related to the injury. Worse, when you ask them for a final lien amount, they will send you two or three letters claiming different figures.

Of course, since they are an extension of the federal government, you can forget about calling them or sending an e-mail. The only way to communicate with them is by snail mail, which holds up settlements for months.

Stupid-Easy Recipe of the Month

Dana's Pink Cloud Salad

Here is a Thanksgiving favorite from Dana's kitchen:

Ingredients:

- 16 oz. Container of small curd cottage cheese
- 1/3 oz. box of strawberry Jello gelatin mix
- 4 oz. Container of cool whip
- 20 oz. can of crushed pineapple, drained

Directions:

In a large bowl, mix together the cottage cheese and 1/2 of the gelatin mix, fold in the whipped topping and pineapple, and the rest of the gelatin mix. Stir until the gelatin is no longer gritty. Refrigerate at least two hours prior to serving. This is a fun recipe to play with. "Decorate" with pineapple slices on top or strawberries. Chopped walnuts may also be added for crunch. Enjoy!



*Light,
fluffy and
delicious!*

High School Football Playoffs

Tired of National Anthem protests? Or watching your favorite college team lose? I am a UK fan, and they are 6-2. But really, how can you lose to Florida (again) because you only have 10 men on the field? Florida is terrible, and UK still couldn't beat them. Well, if you want to get back to the purity of the sport, maybe you should take in a high school football game. There are lots of advantages to watching high school football: 1) The tickets are cheap; 2) Less traffic; 3) There



are no media timeouts, so the games are over in a couple of hours; and 4) Watching the high school kids is about as much fun as watching the game itself. They are more worried about seeing and being seen than watching the game.

The high school playoffs begin on Friday November 3. This year, for the first time, the championships are being played at Commonwealth Stadium in Lexington. You can check out the playoff brackets at khsaa.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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The Titanic of the Great Lakes

November 10, 2017, marks the 42nd anniversary of the loss of the S.S. *Edmund Fitzgerald* on Lake Superior. If you're as old as me, you undoubtedly remember the Gordon Lightfoot song (which seems like it goes on forever, although it's actually about 6 minutes). The actual tale of this vessel - the most famous shipwreck in Great Lakes history - is a fascinating story.

Mentalfloss.com contains these facts about the ill-fated ship:

Launched in 1958, it was the biggest ship on the Great Lakes. It was constructed as a "maximum sized" bulk carrier and spanned 729 feet and 39 feet high, with a width of 75 feet. It weighed more than 13,000 tons without cargo.

The ship was owned by the Northwestern Mutual Insurance Company, which had invested heavily in the iron and mineral industries. At the time it was built, it was also the most expensive freighter ever built. Its main job was hauling iron ore.



The ship was well known before it sank and had several nicknames; one of them, unfortunately, was "The Titanic of the Great Lakes."

Sadly, the ship lived up to that nickname on November 10, 1975. True to the song, November is a brutal month on the Great Lakes. The ship was loaded with 26,116 tons of iron ore pellets. Gale warnings had been issued by the National Weather Service, and by November 10 the advisories had been upgraded to an official storm warning. Swells reached 35 feet and winds raged at nearly 100 mph. The ship became obscured on radar, but no distress

signal was sent. The ship then seemingly vanished. All 29 crew members were lost.

There are many theories as to why the ship sank, but to this day no one knows the exact cause. The U.S. Coast Guard and National Transportation Safety Board agreed that the tragedy was likely due to faulty cargo hatches, but there are other theories, such as unsecured hatches, maintenance troubles, massive waves, and structural issues.

In May, 1976, the wreck was discovered under 535 feet of water. There is also an annual memorial service at the Great Lakes Shipwreck Museum in Whitefish Point, Michigan, not far from where the ship went down.

Of course, the ship was immortalized when Canadian musician Lightfoot recorded the song on his 1976 album, *Summertime Dream*. The song reached #2 on the Top 100 Billboard charts that year, and became his second most-successful hit.

I'll bet you can't get that song out of your head now, can you?