



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**

Why a Newsletter?

You are receiving this newsletter because you are an existing or past client of our firm, or have contacted us about representation. For this reason, this newsletter is not an "advertisement" under Ky. Supreme Court Rule 3.130-7.02(1)(h). It is our way of staying in touch with people who have had a relationship with our firm. We care about the people we have helped and want you to know your relationship is valuable to us, even after your case is over. We hope you find it entertaining and informative, and would love to hear from you if you enjoy it! Our best,
Brad Harville
Dana Skaggs

May You Live in Interesting Times?

A quick internet search for the origin of the phrase, "May you live in interesting times," reveals that it is popularly attributed to an ancient Chinese curse, although, according to quoteinvestigator.com, no direct Chinese source can be found. The closest approximation in Chinese lore is an old adage that says "Truly, better be a dog in days of peace Than a human in times of war!" Well, I am blessed to say that things are going well enough for me that I have no desire to become a dog anytime soon, but I can certainly see some reason behind the characterization of the phrase, "May you live in interesting times," as a curse. You certainly can't argue that 2020 has been a very interesting year, and not in a good way as it has been so difficult for so many people because of the pandemic, all of the racial and social unrest, and now we have this extremely divisive presidential election approaching. This week, I watched the first Trump-Biden debate with my two sons, ages 27 and 24. They asked me if I had ever seen anything like it, and of course, I haven't. I've never seen a president as rude as Trump, and I've never seen a candidate call a sitting president a "clown" or tell him to "shut up." Joe Biden is no Emily Post, either. Thus, amid all of the turmoil, it has become popular among the media to say that our country is more divided now than it ever has been since the Civil War. At least they recognize that times during

the Civil War were worse. But I'm not sure this is the worst time since then. I was born in 1960, and remember nightly broadcasts of the Vietnam War, protests, riots, and the assassinations of Martin Luther King, Jr. and Robert Kennedy in 1968. That was followed by Nixon and Watergate, ultimately resulting in his resignation and pardon by his successor, Gerald Ford, in 1974. Those were some deeply divided times as well, and there was also a lot of racial tension with court-ordered busing. But at least we didn't have a pandemic to deal with.



Growing up in those times shaped my view of our country and the world a great deal. There was a seismic shift that took place in the 1960s and 1970s among attitudes of my generation toward government and public institutions. We no longer put blind faith in public officials or the military like our parents did. It was reflected in the way we dressed, the length of our hair, and the music we listened to. We just didn't give a crap. But if you take a step backward to my parents' generation, they grew up under a totally different set of circumstances. My father was born in 1921 and my mother was born in 1928. They lived through the Great Depression, where

people came to depend on the federal government to provide jobs and subsistence. Then came World War II, when the United States had to transform its military from mounted calvary on horseback to a modern war machine in order to defeat enemies bent on world domination. They grew up united, disciplined, frugal, ready to do whatever their country asked them to do. You also kept your private life private, which is a quaint notion compared to now when everyone seems compelled to share every detail of their lives on Facebook. But if you think my parents' generation was tough, they were nothing compared to the people who settled this country, Kentucky in particular. People today have forgotten that Kentucky was the object of the first westward expansion from the original 13 colonies. The settlers had to travel here on foot and build cabins in the middle of the wilderness and survive Indian attacks and disease. And their ancestors had to find some way to cross the Atlantic on a 17th or 18th century ship just to get over here. Yes, today's times are interesting, and that's not necessarily a good thing. But interesting times have always been a part of life for every generation in this country, and it seems to me that every generation has somehow managed to build upon the lessons of the past and improve upon their parents' generation in some way. •BDH

HOW TO READ A KY. TRAFFIC COLLISION REPORT

It is unfortunate that during the current pandemic, many local law enforcement agencies, including LMPD (which has certainly had its hands full), have adopted a policy of not respond-



ing to non-injury accidents, and instead are encouraging those involved to exchange information and file a "Civilian Traffic Collision Report," which is done through the Kentucky State Police's website. We have had a number of cases in our office in recent months where no one reported any injury at the scene, and no police report was taken, even though many car wreck injuries do not manifest themselves immediately, while everyone's adrenalin is pumping, and the pain and stiffness does not set in until later.

If you are in a car wreck, you should make every effort to get the police to come to the scene. An official police report is very helpful in dealing with insurance companies in handling property damage and personal injury claims. However, if the police will not come, then you should make every attempt to exchange information with the other driver, most importantly name, address, car insurance company, and policy number. Ask to take a cell phone photo of the other driver's license and proof of insurance, as well as photos of the scene and vehicle damage. Then go on the KSP's website, kentuckystate-police.org/civilian-collision-reports/, and complete the information required to complete the online report. Make sure you download a copy before you close the web page, otherwise you will have to request a copy from the KSP through Open Records.

When filled out correctly, which is usually but not always the case, the official police report contains a treasure trove of information which any experienced lawyer is going to want to comb through when he or she first looks at any car wreck case. The most obvious items of information are the date and time of the wreck, the location, the names and addresses of the drivers and any passengers, their dates of birth, the makes, models, license plate and VIN numbers of the vehicles involved, the names of the insurance companies for the drivers and policy numbers, and any witnesses. Additional details include lighting and weather conditions, whether any drivers were suspected of drinking, whether any citations were issued, direction of travel of each vehicle, area of contact to each vehicle, whether the damage was considered to be "minor," "moderate" or "severe," whether any vehicles were towed, and whether any photographs were taken by the investigating officer(s) at the scene.

There is also a box on the police report for the estimated speed of each driver at the point of impact, but this often gets left blank, probably because the officers don't ask, even though this is im-

portant information. Most reports also don't include any named witnesses, which is unfortunate but not surprising because people typically don't want to get involved, but sometimes the officer just doesn't bother. And when you get a report that names a witness, you are lucky if it provides an address but you almost never get a phone number, and if you, do you are lucky if it is valid.

Another trick to reading these reports are the codes that appear on the pages that list the driver of each vehicle. There are boxes marked "A" through "K" on these pages, and alongside each driver and passenger's information are more boxes numbered 14 through 23. To understand what the codes in these boxes mean, you need to get a cover sheet which explains these codes, which can be downloaded from a number of websites, just Google "kentucky collision traffic report cover sheet." These codes include what the police officer considers to be any human, environmental or vehicular factors contributing to the accident, the most common of which is usually driver inattention. The numbered codes alongside each person involved also tell you whether each person involved appeared to be injured, location of injury, whether that person was wearing his/her seatbelt, and whether any airbags deployed.

After compiling all of this information, the investigating officer will usually include a narrative summary of his or her impressions on page 2 of the report. In more serious accidents, he or she may also include a diagram to help illustrate how the crash occurred. And, they will always list the driver of the vehicle they consider to be at fault as Unit 1 on the report, and the other driver(s)/vehicle (s) as Unit 2, Unit 3, etc. The only exception is if the police officer is unable to determine which driver he/she thinks was at fault, in which case they will say so on the report.

All of this being said, there are a couple of things to remember. First of all, the police officer's impressions and conclusions in the report are not always accurate or correct. I have a case right now where the police officer listed my client as being the at-fault driver, even though an eyewitness (whose name does not appear on the report) stated that my client had the green light at the intersection when the wreck occurred. Also, the police report is not admissible as evidence at trial, because it is not firsthand information. All that a police officer can testify to at trial, generally, is what the drivers told him/her at the scene and what he/she observed.

I hope this article gives you a better idea of why it is so important to try to make sure the police take a report if you are in a wreck, especially if you are injured. After I review the report, the first thing we usually do is contact the at-fault driver's insurance company listed on the report to obtain the claim number so that we can begin the process of pursuing our client's injury claim. We also want to make sure we obtain any photographs and interview any available witnesses as soon as possible.

Current Trends in Personal Injury Law

The principle that an employer is responsible for the acts of its employee acting in the course of employment is known as *respondeat superior*.

Recently, in *Hensley v. Traxx*, the Ky. Court of Appeals (COA) addressed the issue of when an employee's conduct falls outside the scope of his employment, such that the employer is not responsible. The facts of this case are that the employee, Price, was working at a gas station in Rockcastle County when he was robbed at knifepoint by Hensley. As he was leaving, Hensley told Price that he would kill Price and his family if he called the police. Price, who had been compliant up to that point,

became upset once Hensley threatened his family, and followed him out into the parking lot with a pistol, shooting Hensley and killing him.

Believe it or not, Hensley's widow then sued the gas station owner, Traxx Management, for wrongful death, and obtained a jury verdict for \$2.4 million. However, the trial court set the jury verdict aside, as the jury inconsistently found that Price acted both negligently and intentionally. The case went to trial again, this time resulting in a defense verdict.

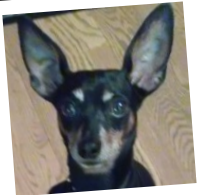
The case then went up on appeal, and the COA addressed the issue of whether Traxx could be held responsible for Price's conduct in shooting and killing Hensley. The law

on this issue requires that the employee's act "must have been committed while the employee was engaged in furthering his employer's business or interests, without any deviation by the employee to a pursuit of his own business or interest." However, because Price testified that he carried his pistol for his personal protection, and shot Hensley only because he threatened his family, the Court found he killed Hensley for his own personal reasons, and not for any purpose of his employer. Thus, Traxx was entitled to dismissal. A motion is currently pending before the Ky. Supreme Court to review the COA's decision.

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.



Casey's Ky. Trivia Question:
Which haunted location in Louisville has been featured on Travel Channel's "Ghost Adventures?"

- A. Seelbach Hotel
- B. Cave Hill Cemetery
- C. Phoenix Hill Tavern
- D. Waverly Hills Sanatorium

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!

Stupid-Easy Recipe of the Month

A delicious fall favorite!

Pumkin Spice Bread

Ingredients:

- 2 cups canned pumpkin
- 3 cups sugar
- 1 cup water
- 1 cup vegetable oil
- 4 eggs
- 3 1/3 cups of flour
- 2 Tsp baking soda
- 2 tsp cinnamon
- 1 tsp salt
- 1 tsp baking powder

- 1/2 tsp nutmeg
- 1/2 tsp ground cloves

Directions:

Heat oven to 350°, Grease and flour two 9X5 loaf pans. In large mixing bowl, combine pumpkin, sugar, water, vegetable oil and eggs. Beat until well blended. Stir dry ingredients in separate bowl. Slowly add dry ingredients to mixing bowl while you blend. Divide batter into the 2 pans and

bake for 60-70 minutes (until toothpick inserted in center comes out clean). Remove from pan when cool. Delicious with morning coffee or as a dessert. Serve alone, or with cinnamon butter, cream cheese, a sprinkle of powdered sugar.



Favorite Pet of the Month

Todd is a 10 month old gorgeous shepherd/husky mix with quite a story to tell! He came to Barktown Rescue in the middle of the night as part of a multi-rescue effort to save sheltered animals in Florida area from flooding caused by Hurricane Sally. Kentucky is glad to have him and you will be, too. He is friendly, playful, and would take to training quite easily.

Have room in your family for a new pet? Todd would be a great addition!

Visit www.barktownrescue.org and fill out an application.

Dana serves on the Board of Directors at Barktown Rescue. 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!



Todd



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To be removed from our mailing list,
please call (502) 245-2333

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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