



Harville
LAW OFFICES, PLLC

The Louisville Accident Lawyer Journal

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OVER 35 YEARS EXPERIENCE

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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

Workers Comp 101

We have been handling a lot of workers' comp cases lately, and have been getting some really good results. Right now, I would say around 40% or so of our open files are workers' comp cases.

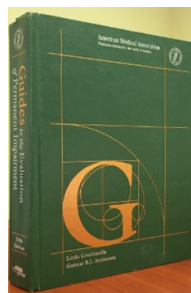
One of the things that separates our office from most personal injury firms is that we are equally comfortable handling auto accident injuries as well as workers' comp cases. As I have said in my local print ad, most injury lawyers don't do workers' comp cases, and most workers' comp lawyers don't do injury cases, but we do both. That's important, because in some cases you can have both types of claims if you are injured on the job due to someone else's fault, such as when someone on company time is injured in a car wreck caused by a careless driver.

Some TV law firms don't have any workers' comp lawyers, and will farm out the comp claim to a lawyer outside the firm. For those that do, they will have one lawyer handle the injury claim and another lawyer handle the comp claim. Neither scenario is a good idea.

Most cases, however, don't overlap. It's either an injury case with no workers' comp involved, or a comp case where the injury isn't caused by a negligent third party.

The point is, we are actively engaged in practicing both types of cases all of the time, although they are two very different types of cases. Most people don't have a very good understanding of the differences between the two, especially when it comes to workers' comp.

For this reason, when I meet with someone with a workers' comp case for the first time, I give them what I call my 5-minute "Workers Comp 101" speech. It goes something like this:



The workers' comp Bible

If you are injured on the job in Kentucky, nearly every employer doing business in this state is required to provide workers' comp benefits for your injury. Basically, there are 3 types of benefits that the employer is required to provide: 1) medical benefits to pay for all reasonable and necessary expenses for treatment of the injury; 2) lost wages benefits for that period of time that the injured worker is temporarily unable to work ("TTD"); and 3) a "permanent disability" award, which is a statutory formula based upon the degree of permanent impairment caused by the injury. There is no such thing as pain and suffering in workers' comp. In most cases, workers' comp insurance companies will voluntarily pay medical benefits for treatment of the injury, as well as lost wages benefits while the employee is off work. But they don't usually tell injured workers about the permanent disability award, which is the main reason injured workers should get a lawyer. However, if the employer has denied the claim, or is balking on paying for medical benefits or lost wages benefits, then the injured worker should get a lawyer as soon as possible.

Lawyers get paid in comp cases from the recovery of benefits resulting from the lawyers' services. Like personal injury cases, it is a contingency fee, so the client pays no money up front. Usually the fee is paid from the permanent disability award, although this can also include recovery for past lost wages or other past or future benefits. The fee is set by statute, KRS 342.320, which provides that the lawyer is paid 20% from the first \$25,000 recovered, 15% from the next \$25,000 recovered, and 10% from the remaining amount recovered, up to a maximum fee of \$18,000. This is a very favorable fee arrangement for the client in comparison to a personal injury case, in which fees typically range from one-third to 40%.

The other thing about workers' comp cases is that they are "doctor-driven." By statute, in order to prove a permanent disability claim, the lawyer must provide a medical opinion as to the percentage of permanent impairment caused by the injury according to the "AMA Guides to the Evaluation of Permanent Impairment," Fifth Edition. This book is the "Bible" of workers' comp. The most important aspect in every workers' comp cases is getting a "permanent impairment rating" from a qualified doctor to establish the value of the claim.

This is where it really pays to have a lawyer who knows the right doctors. And we do. • BDH

TECHNOLOGY AND THE LAW

In recent years, Dana has been teaching evening classes at Sullivan University's College of Legal Studies. Currently she is teaching a class called "Computers in the Law Office," and she asked if one of her students could interview me about the changes in legal technology over the years. Of course I agreed.



I hadn't given it much more thought until last week, when Dana reported that her laptop computer had gone belly up. I made a valiant effort to resuscitate it, but it was no use. Her computer had permanently crossed over into the black screen of death.

Of course, this isn't the first time I've had an IT crisis in my 36 years of practicing law, but it had been a while since my last one. Nothing can cripple a lawyer's ability to practice law quicker than a computer meltdown. It's a complete black hole until you get the situation resolved. My laptop was fine, but Dana could do nothing about working her cases the situation was fixed. That meant I had to drop everything and go into action.

Like I said, it wasn't my first rodeo. I spent the rest of the morning searching IT websites and making futile attempts to resurrect the expired laptop - like those doctor shows where the surgeon tries frantically to bring the patient back to life, even though everyone else in the room knows it's over - before I accepted the laptop's fate and consigned it to the Great Beyond. I can't say I was surprised, because it was an older laptop that had lasted far longer than it had any right to. I knew it was time for a replacement.

I then called the smartest computer person I know, who works out of his home maybe 10 minutes from my house. I found Steve around 5-6 years ago, and I wish I had discovered him many years sooner. He is the nicest guy in the world, and is a stone-cold computer genius. Seriously, this guy taught himself how to program in BASIC when he was 8 years old, and started taking computers apart when he was 11. When he's not taking care of his customers, he writes laptop reviews for a couple of different websites. The guy literally lives and breathes computers.

So, I drove over to Steve's house around lunchtime and dropped off the corpse of Dana's computer. Steve ordered a new laptop directly from Dell (which he buys wholesale). Within 48 hours he had received the new computer and transferred all of the data from Dana's old hard drive into her replacement computer.

I thought I was home free! But once I got back to the office, I hit another wall. I had to connect the replacement computer with the office printer. The problem being, my office printer, which works great, is now about 15 years old. When I tried connecting to it

with the replacement laptop, I got the lovely message that the software was "incompatible with Windows 10." Even though I use it all the time with my own Windows 10 laptop. Ohhhhh

Back down the rabbit hole I went. I finally had to quit because it was late Friday afternoon, and Mary and I were going out of town that evening. Through trial and error, I finally cracked the solution on Sunday afternoon July 4. Which explains why I'm not getting this newsletter mailed out until July 6.

So what's the point of this story? It's just that lawyers have to deal with IT issues like everyone else. We are so dependent on technology. According to a recent "60 Minutes" story, we are just one Russian cyberattack away from our whole economy going down.

It didn't used to be this way. When I started practicing law in 1985, there was no internet or e-mail. The firm where I began had a secretarial pool. You would dictate into a tape machine and leave your dictation on a table where they would type it up. We didn't even have word processors! Our dictation was typed up on IBM Selectrics which had a mag card that could save about one page at a time. We printed on dot matrix paper! After I had been out of law school for a year or two, we got our first fax machine! It operated on rolls of thermal imaging paper, which looked like a paper towel and printed using heat, not ink. It was all very exciting.

Technology has also changed how we practice law. Back then, you wrote letters, not e-mails. When you mailed a letter, you didn't expect a reply for another week or so. For that reason, you did most of your business by calling people, especially other lawyers.

Nobody does that now. Lawyers, including yours truly, are too busy to take calls. You don't answer any calls on your cell phone, either, unless you recognize the number, because it's usually the warranty department or someone wanting to buy your house. Most of your communication with other lawyers and insurance companies takes place using e-mails. If you really want to make sure they know you mean business, you print a letter and attach it to an e-mail. Isn't that silly? But there are insurance companies that won't accept a letter of representation unless it's a "formal" letter on letterhead; which, naturally, I e-mail to them.

Of course, the pace of technology has been accelerated greatly by the pandemic. In a lot of ways this has been a good thing. Remote hearings are much more efficient than in-person hearings - unless, of course, you have technical issues, which are not infrequent.

I could write all day about how technology has changed the practice of law, but I will close with this: This wave of Information Technology has been with us for only 30 years or so. In a sense, we are still driving 1930s Oldsmobiles, and there are a lot of improvements yet to be made. There is no telling what things will be like in another 30 years. All I can say is, I'll keep trying my best to keep up.

Current Trends in Personal Injury Law

In March and April of this year, I wrote 2 consecutive columns about two types of cases that are much more difficult for lawyers to pursue than they used to be: 1) nursing home cases, because of arbitration agreements; and, 2) insurance “bad faith” cases, because the Ky. Supreme Court’s interpretation of the law has made such cases virtually impossible to win.

I am starting to wonder if I have ESP when I write this newsletter. Just a month ago, on June 3, WHAS-11 news ran a 2-part story on arbitration agreements in nursing homes, and how they keep such cases out

of the courts and the public eye. You can watch those videos using the following links: [WHAS-11 video #1](#); and [WHAS-11 video #2](#).

In fact, Congressman John Yarmuth is interviewed in the second video about a proposed bill in Congress, H.R. 963, the FAIR Act, that would prohibit pre-dispute arbitration agreements in nursing home and other cases, but it met with stiff opposition from nursing home lobbyist groups. The last action taken on this bill was on 4/23/2021 when it was referred to the Subcommittee on Antitrust, Commercial, and Administrative Law. I doubt it will ever

see the light of day again.

Then, on June 17, the Ky. Supreme Court issued another decision on insurance “bad faith” cases, [Mosely v. Arch Specialty](#), which again raises the bar so ridiculously high in these cases that I don’t know how you could ever hope to win one. This opinion says if an insurance company can make an argument that anyone else besides its insured might be at fault, no matter how ridiculous, you can’t make out a bad faith claim.

Like I said, I don’t know why any lawyer would want to take any more nursing home cases or bad faith cases. Bad law has killed these cases.

Stupid-Easy Recipe of the Month

Delicious Grilled Cauliflower:

Love to grill in the summer? Try this recipe: Take a medium head of cauliflower, remove the leaves, stem, and core. Rinse with water. In a small bowl mix the following ingredients together:

- 4 Tbsp softened butter
- 1/2 Tsp salt
- 1/4 Tsp pepper
- 1/4 Tsp garlic powder
- 1/8 Tsp paprika
- 1/8 Tsp nutmeg

Use a rubber basting brush to spread the mix over the head of cauliflower. Enclose the cauliflower in heavy duty aluminum foil and grill for 50-60 minutes on medium heat with lid closed. Watch out for steam when you unwrap. A great side for any entree!



Sprinkle with buffalo sauce, too!

Favorite Pet of the Month

This beautiful adult Husky mix is named Lorelai (like the Styx song!). She is playful, affectionate, and keeps a watchful eye on all people.

Lorelai would make a great family pet, but due to her size, she may be best suited in a home with older kids.

If Lorelai sounds like a perfect addition to your family, go to www.barktownrescue.org to fill out an application!

Dana serves on the Board of Directors at Barktown Rescue.

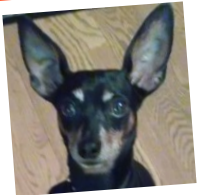
Brad and his family love pets, too!

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!

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: What is the oldest Kentucky State Park?

- A. Cumberland Falls S.P.
- B. Carter Caves S.P.
- C. Natural Bridge S.P.
- D. Pine Mountain S.P.

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!



Lorelai



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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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