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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

Statutes of Limitations

Many of you probably have some idea of what statutes of limitations are, but it's a topic I don't think I've tackled before in this newsletter, so here goes.

As the term indicates, statutes of limitations are statutory laws passed by the state legislature. They represent a policy decision by our elected lawmakers as to how long someone should have to pursue a claim by filing a lawsuit before they forfeit that right.

The courts, on the other hand, are tasked with the job of interpreting the statutes enacted by the legislature, and this includes statutes of limitations. Courts recognize that statutes of limitations "are designed to bar stale claims," and they are generally enforced with very few exceptions.

Of course, what constitutes a "stale" claim lies in the eye of the beholder. Under [KRS 413.140\(1\)](#), Kentucky adheres to a 1-year statute of limitation for personal injury cases, the sole exception being motor vehicle cases. That's the shortest time period allowed by any state in the nation, shared by only Tennessee and Louisiana. Every other state allows for a longer statute of limitations in personal injury cases, such as our neighboring states of Indiana, Ohio, Illinois, West Virginia, and Virginia, all of which have a 2-year statute before a claim is barred.

On the other hand, Kentucky's statute of limitations for motor vehicle cases is a different animal,

thanks to its no-fault law that was passed in 1975. That confuses a lot of people unfamiliar

with Kentucky law, because in most states the statute for personal injury cases and motor vehicle cases is the same. However, the Ky. legislature made a decision that it wanted people to get treatment for their injuries before they worried about making a personal injury claim. For this reason, it required "no-fault" insurance to pay for medical benefits, and passed a new statute of limitations, [KRS 304.-39-230](#), which requires any suit to be filed within 2 years from the date of the accident, or the from date of the last "no-fault" payment, whichever is later.

Workers comp cases, too, are subject to a statute of limitations found in [KRS 342.185](#). That statute says that any claim for workers' comp benefits must be filed within 2 years from the date of injury or the date of the last payment of income benefits, whichever is later.

Those are the primary statutes of limitations that are pertinent to our practice. At times we may run into incidental claims for personal property or real property. When I started practicing law, the statute of limitations for both personal property and real property was the same, 5 years from the date of loss, under [KRS 413.140](#). However, in 1988, the legislature enacted a separate statute,



[KRS 413.125](#), which shortened the statute for personal property to 2 years from the date of loss.

All of this seems very academic until you consider the consequences of letting a statute of limitations expire without asserting a claim for personal injury or workers' comp.

I can't tell you how many phone calls I have had from people who tell me they suffered from a serious injury in a car wreck or at work, but just didn't think they needed to call a lawyer until it was too late. I have had a gentleman call me one month after the 2-year workers' comp statute expired. I have had another lady call me just over a year after she slipped and fell on a wet floor at a school. It happens all the time. I hate to tell them the bad news, but I don't have any choice.

I don't know of any statistics, but just based on my own experience, I would say people in Kentucky lose out on millions of dollars each year because they don't call a lawyer in time, even though they have a good case. That's the sort of information insurance companies love to hear. Every time that happens, the insurance company wins and the injured person loses.

So please, if you or someone you know has been injured in an accident or at work, don't procrastinate. Call a lawyer. And make sure you call a firm where you can actually speak with a lawyer, not some TV law firm that uses case workers to screen callers. Their case workers don't know the law. We do. • BDH

THANKSGIVING TRADITIONS

For years, our family tradition for Thanksgiving was to go to Mary's family farm in Union County, Kentucky. Her mother and father had about a 100-acre farm that was at least a half mile from the nearest neighbor. It's about a 2 1/2 hour drive from downtown Louisville.

Union County is beautiful farmland, with gently rolling pastures. You can literally dig 20 feet down and not hit any rock, which is unheard of in Central Ky. It is the next county west of Henderson County along the Ohio River, where Kentucky borders both Indiana and Illinois. It ranks among the top counties in the state in corn and soybean production, and is also home to some large coal-mining operations. The highest point is probably just west of Uniontown, where the coal mining companies have dumped coal waste for many years and created a huge hill.

Mary's parents were both from Garrard County (Lancaster) Ky.. Her oldest uncle moved to Union County during World War II to farm hemp for making rope for the war effort. Mary's parents moved there to farm in the early 1950s, and lived there for the rest of their lives, until her father passed away in 2004 and her mother in 2017.

That was where we went for Thanksgiving just about every year, before and after Doug and Clay were born. They loved it. For a few years we held Thanksgiving at the home of Mary's cousin in Henderson, which was a larger gathering and a lot of fun.

But things changed after Mary's father was no longer with us. Her cousin's family was growing, and we decided to graciously bow out and stay on the farm with Mary's Mom, her brother, his wife and their son, who is 6 months older than Clay. We did that for maybe 2-3 years, I don't remember exactly, but it got to where we would have our meal and just sit around and stare at each other because there wasn't anything else to do besides watch football. It was usually too cold to stay outside for long, and there's only so much walking around you can do anyway.

That changed again one year after we came home and happened to be chatting with our neighbors. They told us they had spent their Thanksgiving in Gatlinburg, TN. Gatlinburg?! Why didn't we think of that? We love Gatlinburg! Our boys love Gatlinburg! Mary's Mom loved Gatlinburg! A new tradition was born.

Okay, I know there may be a few Gatlinburg haters out there (I'm thinking of you, Tommy), but allow me to extol its virtues. First of all, it's only about a 5 hour drive, which is why the Smokies are far and away the most visited national park in the nation. It's a reasonable driving distance from just about anywhere in the Southeast. Second, as I said, Mary's Mom loved going there. Third, as I said, our boys loved (and still love) going there. From



Metcalf Bottoms picnic area, Thanksgiving 2015, when Mary's Mom and Casey were still with us

the time Doug was maybe 12 or 13 and Clay was 9 or 10, we let them and their cousin walk around the entire town on their own, even when it got late, with no fear for their safety. They loved to play at the arcade, visit the aquarium, and they also made an annual pilgrimage to the "Pepper Palace" shop to see which one of them could take the hottest sauce.

As for Mary and me, we enjoy hiking the most. We have always stayed in the same condos since we started going down there, which has now been well over 20 years. Usually the units we stay in look like they haven't been remodeled since the 1980s, but we keep going there because of the location and they are dog-friendly (yes, we take our dog). The back of the units have balconies overlooking the Cliff Branch stream and the national park itself, which is very nice. Access to the Gatlinburg Trail, which is a 2-mile trail to the Sugarlands Visitors Center, is just around the block. And it's a short drive to our favorite hiking destination, the Elkmont campground inside the park.

Of course, things have changed again since Mary's Mom is no longer with us. Her brother and his family, who used to bring her Mom from Union County, no longer join us as they now do their own thing. But our family has kept going down there until last year, when we decided Gatlinburg was not the best place to be with COVID going on. But now that we are vaxed and have gotten our boosters, we are planning to return to Gatlinburg once again!

How about your Thanksgiving traditions? Are you getting back to them this year? I hope so! I know our family has been truly blessed by our Thanksgiving traditions over the years, and I'll bet many of you feel the same way. Safe travels and best wishes to all of you this Thanksgiving holiday!

Current Trends in Personal Injury Law

Here's an update on COVID and workers' comp claims. In May of last year, I wrote that workers' compensation claims based on COVID seemed unlikely based on existing law. What I missed was the fact that state governments would take action to make sure that workers' comp paid at least some benefits in COVID cases, just like the federal government stepped in to provide unemployment benefits and PPP loans.

Frankly, I haven't had any workers comp COVID cases, so I haven't paid much attention to this topic, but workers' comp adjusters tell me they are swamped with them.

Here's what happened: In April of last year, Gov. Andy Beshear signed an executive order directing workers' comp to pay lost wage benefits to anyone removed from work by a doctor as a result of "occupational exposure" to COVID 19. These benefits were payable from day one, which is a departure from the statute. The order states "there must be a causal connection between the conditions under which the work is performed and COVID-19, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment." Furthermore, the order created a presumption that COVID was work-

related for certain jobs such as healthcare workers, first responders, corrections officers, child care workers, grocery store workers, and some other categories.

In issuing this Order, Gov. Beshear asserted his power under the state Constitution to "suspend state statutes and regulations." In other words, his office basically created new workers' comp legislation on its own. That's pretty remarkable. Although the legislature took action last January to limit his emergency powers, I don't remember it giving him any grief over this particular executive order, which would have been politically unpopular, to say the least.

Stupid-Easy Recipe of the Month

Easy Turkey Tetrazzini

Ingredients:

- 8oz of dry spaghetti
- 4 tbsp of butter or margarine
- 1/3 cup plain dry breadcrumbs
- 1/2 cup chopped onion
- 3 cups of sliced mushrooms
- 2 tbsp of cooking sherry or white wine
- 1 can of cream of chicken soup
- 1 1/2 cups milk
- 3 cups of cubed turkey (or chicken)
- 3/4 cup parmesan cheese
- 1/2 cup frozen peas

Directions: Preheat oven to 400°. Spray 13x9 baking pan. Cook spaghetti, drain and set aside. Melt 2 tbsp of butter, mix with breadcrumbs in small bowl. Heat remaining 2 tbsp butter in large skillet, add onion and cook for 1 min. Add mushrooms, cook for 5 minutes or until tender. Add sherry or wine and stir for 1 minute. Stir in soup, milk and parmesan cheese on low-medium heat. Add turkey, peas and cooked spaghetti. Pour in baking dish and top with breadcrumbs. Bake for 25 minutes. Salt & pepper to taste.



Leftover Turkey? No problem!

Favorite Pet of the Month

Dusty is a 3-year-old hound mix and a volunteer favorite! He has some hound energy, but seems to enjoy love and cuddle time just as much.

Dusty is housetrained – this boy is ready for his forever home!

Visit www.barktownrescue.org to fill out an application and make Benny and Penny your new BFFs!

Dana serves on the Board of Directors at Barktown Rescue.

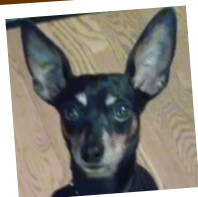
Brad and his family love pets, too!

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: How many Kentuckians have been awarded the Medal of Honor for their military service?

- A. 12
- B. 32
- C. 47
- D. 60

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!



Dusty



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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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INSIDE THIS ISSUE:

Statutes of Limitations	1
Thanksgiving Traditions	2
Current Trends	3
Casey's Ky. Trivia Question	3
Stupid Easy Recipe	3
Favorite Pet	3