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The Chronicle

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Special Points of Interest

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The Duties of a Driver After an Accident

By: Michael E. Hammond

Kentucky law requires that the driver of a motor vehicle perform a number of duties if involved in a motor vehicle accident. There is no requirement in Kentucky for a driver to give a statement to law enforcement concerning the facts of an accident. However, if a driver does volunteer information, it must be complete and truthful.

Pursuant to K.R.S. 189.580, the driver of a motor vehicle in Kentucky has an obligation to perform the following if involved in an accident:

1) Immediately stop and ascertain the extent of injury or damage and render reasonable assistance;

2) Provide to the occupant of the vehicle or person struck, if requested, the registration number of the vehicle and the names and addresses of the owner, occupants, and operator;

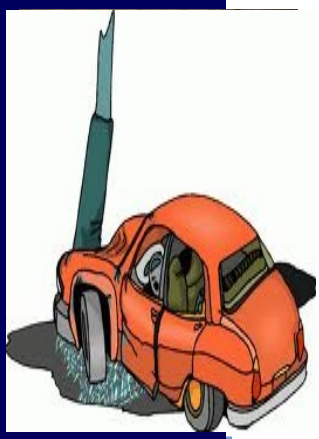
3) If colliding with a vehicle or other property that is unattended, immediately stop and locate and notify the operator of the other vehicle or securely attach a written notice that includes the operator's name, address and vehicle registration number;

4) If there is a fatality, known or visible personal injury, or a vehicle is rendered inoperable, notify a public safety entity if in possession of a communication device. If an accident results in injury or death or property damage over $500.00, and if law enforcement does not investigate, file a state police report within ten (10) days.

In Harralson v. Monger, 206 S.W.3d 336 (Ky., 2006), a driver voluntarily offered false information to the investigating officer. As a result, the victim of the accident pursued legal action against the wrong person. In this case, Kentucky's Supreme Court held that the original driver would be unable to utilize a statute of limitations defense. However, the case does not specifically find that a driver is required to provide information regarding how the accident occurred to an officer at the scene. Instead, the case merely holds that any information voluntarily provided must be complete and truthful. Clearly, the rationale for the decision is to allow the victim of the accident to seek compensation for his or her injuries and damages. If the accident participant chooses to remain silent when questioned by an investigating officer based upon Fifth Amendment grounds, it is his or her constitutional right to do so, and Kentucky statutes do not establish any duties contradictory to that constitutional right.

The Unknown Driver: Apportioning Fault

By: Todd G. Allen



Occasionally adjusters and attorneys are faced with motor vehicle accident cases involving an unknown driver with alleged liability. During settlement negotiations, we are left to wonder whether liability, and therefore damages, can realistically be apportioned to the mystery driver if the case proceeds to trial.

Kentucky courts approach the issue differently depending on whether apportionment is sought by a UIM carrier or a known driver. However, the result is the same: fault can be apportioned to an unknown tortfeasor, so long as he or she is a party to the suit (named an "Unknown Defendant"), and the court makes a threshold determination that a jury could reasonably find the unknown party liable.

In Kentucky Farm Bureau v. Ryan, 177 S.W.3d 797 (Ky. 2005), the Kentucky Supreme Court addressed apportionment of fault in the context of a UIM contract claim. Plaintiffs filed suit against a known Defendant driver, as well as their UIM carrier for damages sustained during a two-vehicle accident. At the time of the accident, however, an unknown driver swerved in front of the Defendant, causing the resulting collision. The UIM carrier filed a third party complaint against the unknown driver, and requested that fault be apportioned between the known Defendant and mystery tortfeasor.

The Court approached the issue as one arising in contract law, not tort law, given the contractual relationship between the UIM carrier and its insureds. Therefore, the Court held that Kentucky statutory law, traditionally governing apportionment of liability between parties to tort actions, did not apply. Nevertheless, the Court allowed the UIM carrier to seek apportionment against the unknown driver.

"For non-UIM tort actions, Kentucky statutes establish that juries shall be instructed by the court to apportion liability among *all* parties to the suit. See KRS 411.182. In response to challenges by those opposed to apportionment of fault to an *unknown* party, the Kentucky Supreme Court held that to allocate the entire burden of fault to a known tortfeasor, despite the fault of an unknown tortfeasor, is "illogical, unfair, and contrary to the purpose of comparative fault principles." Ryan, supra, 177 S.W.3d at 803.

From a procedural standpoint, it is imperative that the unknown driver be joined as a party to the lawsuit. Kentucky's Rules of Civil Procedure specifically allow an unknown defendant to be named in the case, but skip this crucial step and a jury will never have the opportunity to apportion fault to the mystery driver. See CR 4.15. The U.S. District Court for the Eastern District of Kentucky prohibited apportionment of fault against a non-party, holding that Kentucky statutes strictly require an alleged tortfeasor to be a party before the court in order to have liability apportioned against him or her. Asher v. Unarco Material Handling, Inc., 737 F.Supp.2d 662 (E.D. Ky. 2010).

Kentucky statutes and cases provide solid support for apportionment of liability to an unknown tortfeasor, so long as he or she is a party to the lawsuit, and the court determines that a jury could find the unknown party liable. Ultimately, the apportionment of fault will depend on the extent to which the facts prove liability on the part of the mystery defendant.

"Kentucky courts approach the issue differently depending on whether apportionment is sought by a UIM carrier or a known driver."

Federal Courts Jurisdiction and Venue Clarification Act of 2011 Enacted

By: Elizabeth A. Deener

On December 12, 2011, the President signed the "Federal Courts Jurisdiction and Venue Clarification Act of 2011," H. R. 394, P.L 112-63. This represents the first change in over a decade (1996) to federal court jurisdiction and general removal procedures for non-class action civil cases.

The Act makes significant changes to the removal statute, 28 U.S.C. §1446, and will affect nearly every new case invoking federal diversity jurisdiction. The Act specifically addresses rules affecting the timing of removal in cases with multiple defendants and the determination of amount in controversy – resolving a Circuit split on statutory construction.

The first major change addresses the statutory 30-day period to remove an action to federal court. There has been significant disagreements over the removal period for cases with multiple defendants; particularly when those defendants are served at different times. This required the first served defendant to file its petition for removal on the assumption that the later served defendants would consent to and join in the removal as required by the statute. Later served defendants risked being unable to remove, or having a small window of opportunity in which to do so, if the "first served" defendant had not filed for removal.

The amendments in 28 U.S.C. §1446 (2)(B) provide that each defendant will have 30 days from his or her own date of service to seek removal. Even more significantly, earlier-served defendants will also be allowed to join in or consent to removal by another defendant, even if outside the former's 30-day period for removal. To avoid further confusion, the law also codifies the "rule of unanimity," as applied in the Sixth Circuit, see Harper v. AutoAlliance Int'l, Inc., 392 F.3d 195, 201-02 (6th Cir. 2004), which requires all defendants to consent to and join in the removal.

The second change addresses the calculation of "amount in controversy" for diversity removal purposes. Defendants are familiar with Kentucky "notice" pleading practice that permits complaints without a specific monetary ad damnum clause. CR 12.02. Thus, without pre-litigation documents establishing the amount in controversy, defendants were required to serve written discovery on plaintiffs to establish the threshold amount prior to removal - risking dilatory discovery until the one-year time limit on removal expired. This is addressed in the Act three ways. Defendants are now authorized to allege the

amount in controversy in the removal notice when the initial pleading seeks non-monetary relief. Next, Defendants may still remove, even after the 30-day period expires, if they receive discovery from the plaintiff indicating that the jurisdictional amount is met. Finally, while the one-year period for conferring diversify jurisdiction remains in effect, if the "plaintiff has acted in bad faith in order to prevent a defendant from removing the action," the matter may be removed even outside of that time period.

The Act takes effect on January 8, 2012, and will apply to all new state and federal lawsuits commenced on or after that date.

***"[E]*arlier-served defendants will also be allowed to join in or consent to removal by another defendant, even if outside the former's 30-day period for removal."**

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Let us ring the bell for your success.

Welcome to The Chronicle, a newsletter designed to keep you informed on current events and legal issues. Landrum & Shouse, LLP, traces its history from pre-World War II legal service. For nearly 40 years following military service, the late Weldon Shouse and Charles Landrum, Jr., together with their firms, practiced law throughout Kentucky before merging in 1984 to become what is now known as Landrum & Shouse, LLP. The resulting firm is built upon the well-deserved reputations of its founders as experienced, knowledgeable, and hard working trial lawyers.

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THE UM/UIM CARRIER'S "OPPORTUNITY TO DEFEND"
Allstate Ins. Co. v. Hatfield, 2010 WL 2132770 at 4 (Ky. Ct. App.)

By: Kyle W. Ray

A recent Kentucky appellate decision indicates that an UM/UIM carrier should aggressively defend its interests when the adverse driver fails to respond to requests for admissions and/or dispositive motions. In Hatfield, the plaintiff filed suit against the adverse driver and their insurance carrier for UM/UIM benefits following a motor vehicle accident. Requests for admissions served by the plaintiff on the adverse driver went unanswered by the adverse driver and the UM/UIM carrier. The plaintiff then sought summary judgment relying on the unanswered admissions to establish that the adverse driver was at fault for the accident, the plaintiff sustained damages as result of the adverse driver's negligence, and the monetary amount of damages incurred by the plaintiff. Neither the adverse driver nor the UM/UIM carrier filed a response to the plaintiff's motion for summary judgment. The summary judgment entered on behalf of the plaintiff was noted by the trial court as final and appealable.

Subsequently, the UM/UIM carrier filed a motion to alter, vacate and/or amend the summary judgment maintaining it should be allowed to contest damages before the jury even though damages were established against the adverse driver pursuant to the summary judgment order. The UM/UIM carrier's motion was denied by the trial court. The UM/UIM carrier did not appeal the summary judgment or the denial of its motion to alter, vacate and/or amend.

Months later, the plaintiff sought summary judgment against the UM/UIM insurer, claiming the insurer was responsible for paying UM benefits based on the judgment entered against the adverse driver and the policy language in the plaintiff's insurance policy with the UM/UIM carrier which obligated the UM/UIM carrier to pay those damages legally owed to the plaintiff by the adverse driver. The trial court granted the plaintiff's summary judgment motion over the UM/UIM carrier's objection that damages were in dispute. The UM/UIM carrier appealed this decision of the trial court.

On appeal, the Court of Appeals ruled that the summary judgment on liability and damages entered against the adverse driver was enforceable against the UM/UIM carrier. To determine whether the UM/UIM carrier was bound by judgments entered against the adverse driver, the Court of Appeals relied upon whether the UM/UIM carrier had an opportunity to defend its interests. In this instance, the Court of Appeals ruled that the UM/UIM carrier had that opportunity. In making this determination, the Court of Appeals hung its hat on the fact that the UM/UIM carrier was a named party to the lawsuit from the beginning, was aware of all pleadings and filings in the case, and yet failed to act or respond to the requests for admissions served on the adverse driver or the plaintiff's motion for summary judgment against the adverse driver.

For UM/UIM carriers, the Hatfield ruling begs the question of what constitutes "an opportunity to defend". The ruling suggests that UM/UIM carriers should consider a more aggressive approach to protecting its interests when facing similar circumstances.

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