



# Cincinnati Law Library News

A Monthly Newsletter from the Cincinnati Law Library Association

September 2008

## Inside This Issue

- 1 **Boarder Beware! Kentucky Statute Saddles Owners with the Heavy Burden of Proving Negligence**
- 3 **Fastcase Unveils Batch Printing!**
- 6 **Free Lexis CLEs!**
- 7 **Frozen Horse Manure**

## Boarder Beware! Kentucky Statute Saddles Owner with the Heavy Burden of Proving Negligence

By J. Kendrick Wells, IV and Joel B. Turner  
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It is a situation every horse owner dreads: you get a call informing you that there has been an accident at the boarding farm and your horse has died or has been seriously injured. Worse yet, you do not have mortality or insurance to cover veterinary expenses. At least you can count on the owner of boarding operation or its insurer to take responsibility for your loss, right?

Wrong—especially if the stable is located in Kentucky. Generally, a standard boarding contract, whether oral or in writing, gives rise to a legal relationship called a “bailment.” In such a relationship, the stable owner (the “bailee”) owes the horse owner (the “bailor”) the duty to take reasonable care of the horse while it is in the stable owner’s possession.

However, the law does not make stable owners absolute insurers answerable for any possible harm to horses in their care. The stable owner is only on the hook if his negligence – his failure to use reasonable care – caused the loss or injury. In Kentucky, unlike other states, the burden of proving such negligence rests entirely with the horse owner.

### Proving Negligence – a Beast of Burden

Negligence is a tricky legal concept because it means something different in every case and therefore is often difficult – and costly – to prove. In many states however, there is a legal presumption of negligence that arises once the horse owner proves that she entrusted her horse to the care and control of the stable owner and that the stable owner failed to return the horse intact and uninjured. The burden then shifts to the stable owner to present evidence to show that the loss or injury was not the result of negligence. The rationale behind the presumption is that the stable owner, as the party in possession and control of the horse, is in a better position to explain the loss or injury than the horse owner.

In Kentucky, the legislature has enacted a statute that erases any presumption of negligence against one who holds out his land, barn, or other facilities to others for the custody, care, breeding, or selling of horses. The statute places the risk of loss on the horse owner except where the owner can present proof that such

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Continued on page 4



## Serious leverage at depositions

With only a small percentage of cases actually going to trial, the real battleground for most litigation is the deposition room. LiveNote's robust transcript and evidence management tools give you an edge by helping you easily pinpoint crucial testimony that will influence settlements.

Add LiveNote® Realtime to your arsenal and you've got an even

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## Fastcase Unveils Batch Printing! By Fastcase Customer Outreach

By popular demand, the Fastcase legal research service has just launched a batch printing feature, which allows you to print multiple cases at once using Fastcase's dual-column printing service. During the beta of this feature, you will be able to select up to 20 documents at a time to print - either from your search results page, or as you read through the cases. (We plan to increase this number based on your feedback as we fully launch the feature later.)

The service is simple to use, and those familiar with batch processing from other web-based software (such as selecting multiple e-mails for deletion) will recognize many of the same features on Fastcase. Your service now includes a "Print Queue," where documents wait in line to be printed together. Then, when you're ready to print them, go to the Print Queue, select print options just like you would when printing a single document, and hit print.

100%	1. <a href="#">Balboa Ins. Co. v. Trans Global Equities</a> , 218 Cal.App.3d 1327, 267 Cal.Rptr. 787 (Cal. App. 3 Dist., 1990)
90%	2. <a href="#">National Basketball Ass'n v. Motorola, Inc.</a> , 105 F.3d 841 (C.A.2 (N.Y.), 1997)
88%	3. <a href="#">Leto v. Rca Corp.</a> , 341 F.Supp.2d 1001 (N.D. Ill., 2004)
88%	4. <a href="#">Storer Cable Com. v. City of Montgomery, Ala.</a> , 806 F.Supp. 1518 (M.D. Ala., 1992)

Authority Check: Entire database: 18. Sheppard (Lexis) · KeyCite (West)®

Highlight: all search terms. Find: previous term (P) next term (N)

Navigate to the previous case; next case. Jump to the most relevant paragraph (M)

**Print/Save**  
Add to My Print Queue Beta

Balboa Ins. Co. v. Trans Global Equities, 218 Cal.App.3d 1327, 267 Cal.Rptr. 787 (Cal. App. 3 Dist., 1990)

Page 787

267 Cal.Rptr. 787

218 Cal.App.3d 1327, 1990 Copr.L.Dec. P 26,571,

15 U.S.P.Q.2d 1081

You can add documents to your Print Queue from the search results page, simply by clicking the printer icon in the left-hand column. You may also or select Add to My Print Queue when reading the full text of any case.

documents, simply go to the Print drop down and select View Print Queue. From there you will be able to print the documents in either Adobe PDF, Microsoft Word or Rich Text Format (which allows most other office suites to open the document).

To print all your selected

Start Search Results Document **Print** My Library

- Print Results
- Print Document
- View Print Queue**

**Print Documents**

Documents selected: [Firoozye v. Earthlink Network](#), 153 F.Supp.2d 1115 (N.D. Cal., 2001)

[Storer Cable Com. v. City of Montgomery, Ala.](#), 806 F.Supp. 1518 (M.D. Ala., 1992)

[Balboa Ins. Co. v. Trans Global Equities](#), 218 Cal.App.3d 1327, 267 Cal.Rptr. 787 (Cal. App. 3 Dist., 1990)

[National Basketball Ass'n v. Motorola, Inc.](#), 105 F.3d 841 (C.A.2 (N.Y.), 1997)

[Leto v. Rca Corp.](#), 341 F.Supp.2d 1001 (N.D. Ill., 2004)

Highlight search terms:  Yes  No

Number of columns: 2

Format: Microsoft Word (DOC)

loss or damage is due to negligence of the stable owner, his agents, or employees. Moreover, the statute explicitly states that no presumption of negligence in favor of the horse owner arises based on evidence that the horse was delivered to the stable owner and the horse was damaged or lost while in the stable owner's care and custody.

A recent decision by the Kentucky Court of Appeals illustrates just how difficult it can be for horse owners to carry their burden of proving negligence under the statute.

The case involved a barn fire in Oldham County, Kentucky. Seven horses perished in the fire, including three thoroughbreds owned by the plaintiff. The subsequent investigation revealed evidence of possible spontaneous combustion of hay stored in the barn. It was also discovered that, at the time of the fire, the boarding farm was in the process of having the electrical systems in its barns inspected and repaired. The electric company in charge of the work had observed straw and dust in the electrical receptacles and had noted a problem with hay thrown from the hayloft breaking electric lighting globes, but the company maintained that these problems had been fixed in the burned barn prior to the fire. Ultimately, the investigation report classified the cause of the fire as "unknown."

The horse owner filed a civil action to recover for the loss of its horses against the farm but the farm asked the court to dismiss the claims on the grounds that the plaintiff could not prove negligence, as required by the statute. The trial court agreed, finding that no evidence had been presented to show that the farm was negligent to store hay in the barn, that the hay in the barn was improperly

stored, or that the hay had not been properly cured prior to storage. The court also held that the facts did not support a finding that the farm failed to take precautions to prevent hay from getting into the light switch boxes or other electrical elements in the barn. The court dismissed the plaintiff's claims without a trial and the Kentucky Court of Appeals affirmed the ruling.

The *Barrister Farm* case highlights some of the major obstacles that face horse owners attempting to prove negligence. As the party bearing the sole burden of proof, the horse owner will likely have to do his/her own investigation, resulting in extra delay and expense. The horse owner/boarder in *Barrister Farm* did not conduct its own independent investigation and its argument that the investigator hired by the defendant's insurance carrier was "biased" failed to persuade the court. Even if the horse owner hires his/her own investigator, unless all of the involved parties and witnesses cooperate, a lawsuit may be necessary simply to gather all of the facts, resulting in even greater costs (and legal fees) to the owner.

In addition, the horse owner must not only prove negligence on the part of the stable owner – he/she must also prove that the stable owner's negligence *caused* the loss or injury to the horses. Thus, in the *Barrister Farm* case, even if the plaintiff had been able to establish that the boarding farm was negligent with respect to its storage of hay or maintenance of electrical fixtures in the barn, the boarder's claims still might not have made it out of the starting gate given the investigator's conclusion that the cause of the fire was "unknown." This is a common problem in barn fire cases, where much of the evidence is often destroyed in



the blaze.

### The Lesson of Protection

The bottom line is that owners boarding their horses cannot rely on the boarding contract for protection in the event of an accident. Accordingly, owners should take affirmative steps to protect themselves and their investment:

- **Purchase insurance.** Before boarding their horses, owners should look into the availability and cost of mortality and medical insurance coverage. This is the most reliable way to protect against the risk of loss or injury.
- **Get it in writing.** Ask for a written boarding contract and if not available, consider other boarding operations.
- **Check out the setup.** Do not take safety at the prospective boarding farm for granted. Have someone knowledgeable about safety issues inspect the premises and observe the operations. Do not hesitate to ask questions. Who is the owner? How long have they been in the business of boarding horses? Who is in charge of day-to-day operations and who will have direct responsibility for your horses? Ask for references.
- **Verify their insurance.** Make sure that the operators have “care, custody, and control” and “general liability” insurance in adequate amounts to protect from potential losses. Ask for copies of the declarations pages of the policies and check to make sure they are current. Note, however, that care, custody, and control policies typically only cover the operator’s *liability* and thus do not overcome the prerequisite of showing negligence. Such insurance does, however, provide another potential source of funds and could make it easier to secure a settlement in the event of a loss.
- **Contract for special needs.** The stable operator’s idea of what safety requires does not always conform to the horse owner’s concept of safety. If your horse has special needs or if there are specific safety precautions you believe are necessary, push to include those items in a written boarding contract.

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*[www.frostbrowntodd.com](http://www.frostbrowntodd.com)*

## Member Benefits

All members have access to the following valuable resources and services:

**Circulation privileges** to borrow from over 40,000 print volumes for **up to 6 weeks** at a time

Access to extensive electronic databases from the Law Library, including **LexisNexis**, **Shepards’**, **CCH Omnitax**, **CCH Human Resources Group**, and **CCH Business Group** resources, **Hein Online Law Journals** and **Federal Register**, and over 70 **Aspen / LOISLaw** treatises in 16 substantive areas

**Wireless network** throughout the Law Library

Polycom **videoconferencing**

5 **meeting rooms** with speaker phones

Professional **reference service** by our law librarians, available via e-mail, telephone, and in person;

Free **document delivery** by fax or e-mail of print and electronic materials

Inexpensive **CLE seminars** throughout the year, on legal research and substantive topics

In addition, solos and members whose firm has a membership have **24 hour remote access** to Fastcase.com case law and Aspen/LOISLaw treatises

## FREE LEXIS CLEs for OUR MEMBERS: Mark your calendars!

Wendy Gramza of Lexis will offer free CLEs for our members in the Law Library's conference room on the following dates. Space is limited, so please contact Madonna Stoneking to register at 513.946.5300 or [mstoneki@cms.hamilton-co.org](mailto:mstoneki@cms.hamilton-co.org). The non-member registration fee is \$35.

### Basics of Searching & Navigating Lexis

This class covers all of the basics of searching and navigating Lexis.com, including get a document by cite and by party name, table of contents searching, basic term and connector searching, reviewing search results for relevancy and Shepardizing.

**Friday, October 10<sup>th</sup> at 9:00 a.m.**

### Total Litigator & Shepard's BriefCheck

*Shepard's BriefCheck:* This class covers how to use the Shepard's BriefCheck feature, which provides automated cite-checking for your briefs, motions or other pleading documents. BriefCheck will pull the cites from your electronic document, Shepardize them, check them for accuracy and check any quotes in the document for accuracy... all in a matter of minutes!

*Total Litigator:* Total Litigator is a new access interface for searching the Lexis materials. It is set up to mirror the litigation process and therefore, some say, is a little more intuitive when it comes to locating all of the sources you need. During this introduction, you will see a demonstration of how to access the Lexis materials via Total Litigator.

**Friday, October 17<sup>th</sup> at 9:00 a.m.**



## Frozen Horse Manure! Searching Verdicts Electronically

By Glenna Herald

In Pennsylvania, a woman sustained numerous injuries when she tripped over a pile of frozen horse manure. She sued and was awarded \$250,000 in damages. If you practiced law in Amish country, you too, could search for and find verdicts regarding "horses" and "manure" and "accidents" using the jury verdicts database offered through Westlaw.

The Cincinnati Law Library Association has always provided jury verdicts to our members in print, but now we are happy to offer you jury verdicts electronically. The Combined Jury Verdicts and Settlements library from Westlaw allows users to research jury verdicts, judgments, settlements, and arbitrations from U.S. state and federal courts.

To access this database you must visit the library's computer lab. From there, you can search by keyword, for example "frozen horse manure."

To limit your results, Westlaw lets you restrict your search by dollars awarded, attorneys involved, expert-witnesses, state, county, or court. If you would like more information about searching Westlaw for verdicts, please let us know.



## Who Can I Sue? Beyond the Yellow Pages

By Mary Jenkins

A new website called Whocanisue.com that matches consumers and attorneys is launching in September with a multimillion-dollar marketing push. It's now opening enrollment for attorneys wishing to participate.

"The name makes it sound nefarious, but it's not," promises Curtis A. Wolfe, a practicing attorney and founder and CEO of Whocanisue.com. "There's a need in online legal marketing for a solution that's not just a directory service." Source: Advertising Age, August 7, 2008

## 100 Tips and Resources to be a Happy, Successful Lawyer

Who doesn't want happiness and success? The following link promises to help you achieve both.

[http://www.jobprofiles.org/library/guidance/100\\_tips\\_and\\_resources\\_to\\_be\\_happy\\_successful\\_lawyer.htm/](http://www.jobprofiles.org/library/guidance/100_tips_and_resources_to_be_happy_successful_lawyer.htm/)

From Job Profiles, August 11, 2008

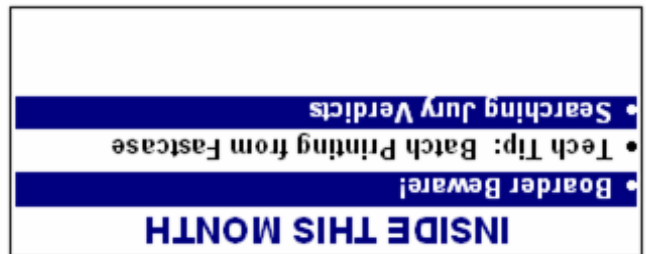
From the intro:  
"To keep you grounded and focused on elevating your career, [Job Profiles] generated this list of job boards, quick reference guides, tips for avoiding the burnout and advice for finding time for yourself."

## Save a Tree and Get the News First!

Are you currently receiving the CLLA newsletter in print? Would you prefer an online version? CLLA members who opt for the online version receive it before the print copy is mailed, plus the links for email and websites are active. We send out a summary via email each month with a link to the full text. To switch from print to online, just email [reference@cms.hamilton-co.org](mailto:reference@cms.hamilton-co.org) with a request to switch formats.



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