

# **WIN** YOUR TRUCK CRASH CASE

**AND AVOID THE SURPRISES THAT CAN WRECK IT**



**GARY BURGER**

PERSONAL INJURY ATTORNEY AT LAW

**WIN YOUR TRUCK CRASH CASE**  
**AND AVOID THE SURPRISES THAT CAN WRECK IT**

**By**

**Gary Burger**

**Burger Law**

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

**314-542-2222**

**[gary@burgerlaw.com](mailto:gary@burgerlaw.com)**

**500 North Broadway**

**Suite 1860**

**St. Louis, MO 63102**

Copyright © 2020 by Gary K. Burger Jr.

All rights reserved. No part of this book may be used or reproduced in any manner whatsoever without prior written consent of the authors, except as provided by the United States of America copyright law.

Published by Winston-Sadie Publishers, St. Louis, Missouri, United States of America.

Printed in the United States of America.

ISBN: 978-1-7923-5780-0

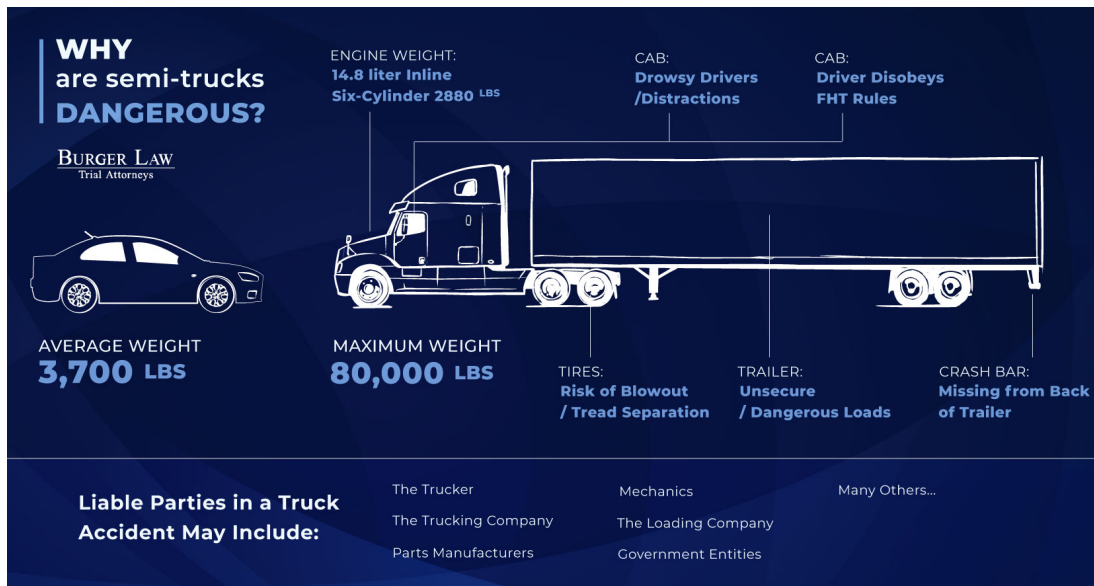
## **TABLE OF CONTENTS**

INTRODUCTION AND THE BASICS.....	4
CHAPTER 1: WHAT ARE THE COMMON CAUSES OF TRUCK CRASHES AND WHY ARE THEY SO DANGEROUS?.....	10
CHAPTER 2: TRUCK CRASH INJURIES ARE SERIOUS AND REQUIRE PROPER MEDICAL CARE.....	15
CHAPTER 3: WHAT DAMAGES CAN I RECOVER IN MY TRUCK CRASH CASE AND WHO CAN I RECOVER FROM?.....	24
CHAPTER 4: CLAIMS YOU SHOULD MAKE IN A TRUCK CRASH CASE.....	30
CHAPTER 5: FEDERAL TRUCKING REGULATIONS: VIOLATIONS FOR WHICH A TRUCK DRIVER AND HIS COMPANY MAY BE LIABLE.....	40
CHAPTER 6: COMMERCIAL DRIVER LICENSE REQUIREMENTS AND SPECIAL RULES THAT APPLY TO TRUCK DRIVERS.....	49
CHAPTER 7: BIG COMPANY REQUIREMENTS FOR TRUCK DRIVERS.....	65
CHAPTER 8: HOW TO HIRE A LAWYER FOR YOUR TRUCK CRASH CASE: QUESTIONS YOU SHOULD ASK.....	69
CHAPTER 9: WHAT MAKES BURGER LAW SO UNIQUE AND SUCCESSFUL IN TRUCK CRASH CLAIMS?.....	74
CHAPTER 10: WHAT TO DO AFTER A TRUCK CRASH.....	104
CHAPTER 11: ACT QUICKLY ON YOU TRUCK CRASH CLAIM AND DO NOT SETTLE TOO EARLY.....	107
CHAPTER 12: INSURANCE REQUIREMENTS FOR TRUCK DRIVERS.....	112
CHAPTER 13: OTHER INSURANCE CONSIDERATIONS: UNDERINSURED AND UNINSURED MOTORIST COVERAGE.....	115
CHAPTER 14: HOW SOCIAL MEDIA CAN AFFECT YOUR TRUCK CRASH CASE.....	124
CHAPTER 15: TRUCK CRASH INVESTIGATION AND LITIGATION .....	125
APPENDIX 1: COMPLAINT/PETITION.....	130

## **INTRODUCTION AND THE BASICS**

Truck crashes happen frequently and can cause devastating personal injuries and significant property damage. A quick overview of the statistics will illustrate just how serious truck crashes are. According to the National Highway Traffic Safety Administration (NHTSA), in 2018 there were 151,000 people were injured in crashes involving large trucks and an estimated 531,000 large trucks were involved in police-reported traffic crashes. In 2018, truck crashes killed 4,951 people in the United States in crashes - almost a 1-percent increase from 2017. That figure includes 129 people killed in Missouri and 166 people killed in Illinois. Of the people killed in large truck crashes in the U.S. in 2018, seventy-one percent were occupants of the other vehicle, not the large truck. Large-truck drivers involved in fatal crashes had a higher percentage of previous crashes compared to drivers of other vehicle types, namely motorcycles, passenger cars, and light trucks. Moreover, large trucks made up 9.4 percent of all vehicles involved in fatal crashes, while only accounting for 4 percent of all registered vehicles. That's twice as many deaths as cars – due to the size and force of over the road tractor trailers.

Drivers who violate safety rules which cause traffic crashes needlessly injure and kill people. There are many good truck drivers and trucking companies in America. Those professionals often are even more critical of bad drivers than us lawyers. Good drivers and their companies focus on safety, defensive driving, adherence to federal and state rules and regulations and have robust training and programs to make sure they drive safe.



But those drivers who take short cuts, value texting and social media while driving, drive too long and when tired, drive under the influence, try to rush to make a delivery, engage in road rage and who other wiles break the Rules of the Road, should be held responsible for the harm they cause. Even some experienced drivers, who have driven for years or decades sometimes forget about the importance of safety rules while driving or get complacent. We are all trained to follow the Rules of the Road and to operate motor vehicles safely – that’s the agreement we make to drive and the social contract we execute. The Rules of the Road are also the law. Rule violations that typically result in injury or death are excessive speed, failure to keep a careful lookout, failure to yield the right of way and violations of traffic signals (set out in Missouri Approved Instructions 17.01 *et seq.*). Under Missouri law, drivers must use the “highest degree of care” or what “a very careful person” would do under the same circumstances (MAI 11.01). Other states have similar laws. In Illinois, lawyers, judges and juries use section 72 of the Illinois Pattern Instructions. For a general description of traffic rules visit:

[https://en.wikipedia.org/wiki/Traffic\\_law\\_in\\_the\\_United\\_States](https://en.wikipedia.org/wiki/Traffic_law_in_the_United_States).



Truck crash statistics in the United States are sobering – and the states with the largest percentages of truck crashes are in the middle of the country, including Missouri and Illinois. And compared to crashes involving other types of vehicles, truck crashes result in far greater injuries to people and property. This is why you need a good lawyer when you are seriously injured or have a family member killed in a truck crash. Truck crashes cause serious and permanent injuries, pain and suffering, and leave victims with mountains of medical bills. Often times insurance companies act like bullies and try to settle your claim for as little as they can get away with paying. One of the main reasons I became a personal injury attorney is because I don't like bullies and I like to stand up for those who are bullied. This includes standing up for truck crash victims when they have to deal with trucking insurance companies.

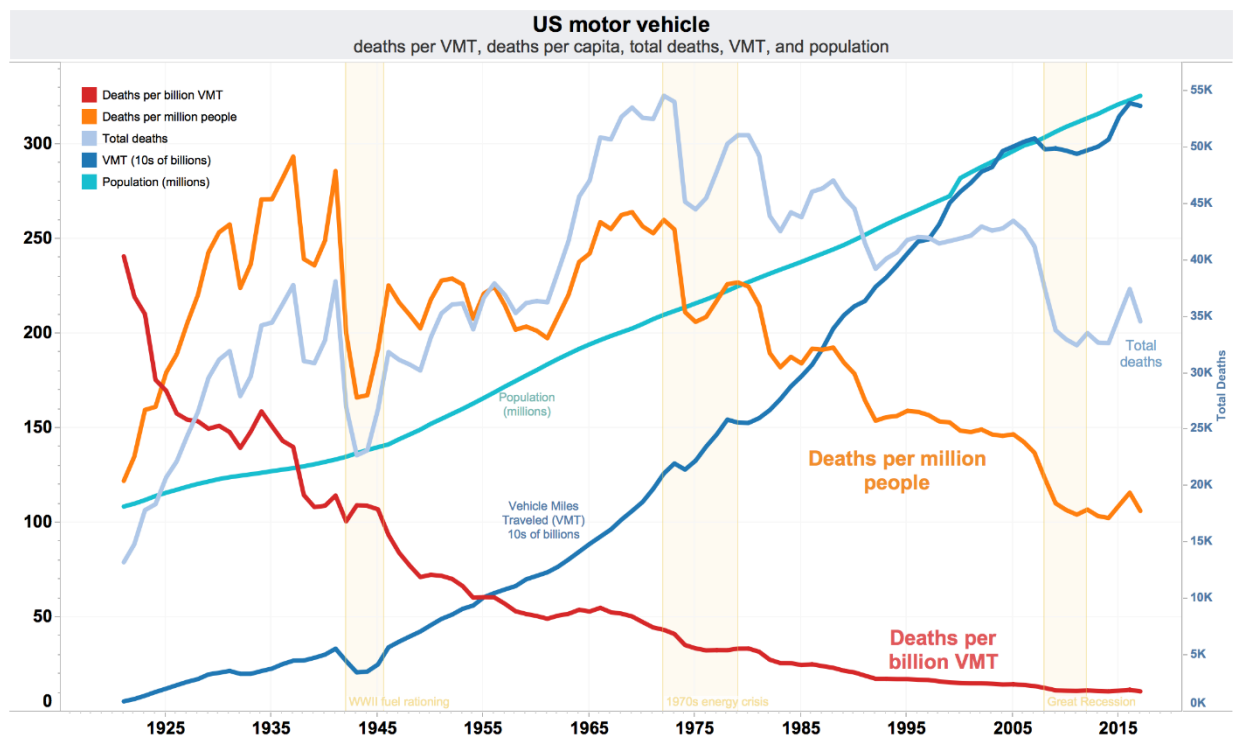
In my book “Ten Mistakes That Wreck Your Car Crash Case,” one of the chapters discusses how people can handle their car accident claims without hiring a lawyer. I suggested that in a car crash where an individual only has minor injuries and low medical bills, a lawyer cannot add much value. However, for the people seriously injured in a wreck, it is imperative to hire a skilled, competent lawyer who will fight to see you fully compensated for your medical costs and for your pain and suffering. For this reason, I wanted to write a book solely dedicated to providing information to individuals involved in serious truck crashes.

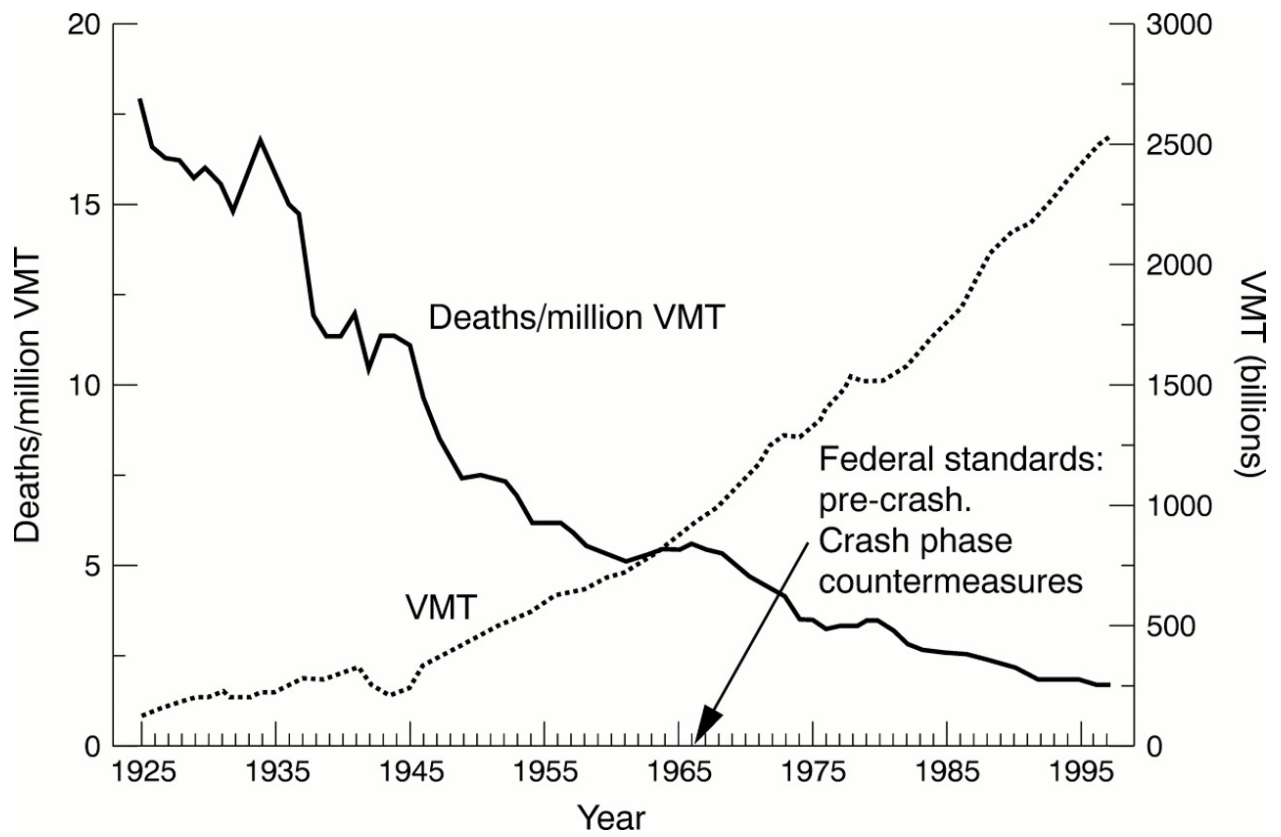
When you are in a trucking accident, you only have a claim for personal injuries if the truck driver was negligent, or caused injury to you. If the accident was your fault, no one else should pay you for your injuries, unless you had medical payment benefits or some other benefits through your insurance. If the truck driver broke the rules of the road, drove unsafely and carelessly and injured you or a passenger, you *do* have a claim. Those claims usually divide into property damage and personal injury claims. Usually, you should handle your property damage claim yourself as you never want a lawyer to take a fee out of the money recovered for your vehicle - you are already not going to get full value for your vehicle damage. Insurance companies pay wholesale or other reduced value to pay for property damage – but you can argue for a higher value.

Make sure you get all your medical care quickly and thoroughly after the truck crash. You will want to undergo treatment until you are at your maximum medical improvement. For a medical or personal injury claim, hire a lawyer for moderate and severe injuries and consider resolving small claims yourself. Be careful in dealing with insurance companies – some are fair but many cannot be trusted. They are incentivized to treat you unfairly – *caveat vendor* or seller beware – and you are selling your claim.

Review of this book will provide you with an overview of what to know about your truck crash case. Below I discuss why truck crashes are so dangerous, damages you can recover, legal claims you should bring, and laws and regulations truck drivers are required to follow, among other things. My goal is to give you a comprehensive understanding of what to expect in your truck crash case and why it is important to have a good truck crash lawyer.

Special thanks to Michael Sheldon and Nishant Patel – two graduating third year law students who will be great lawyers - for their great help in writing this book.





## **CHAPTER 1:**

### **WHAT ARE THE COMMON CAUSES OF TRUCK CRASHES AND WHY ARE THEY SO DANGEROUS?**

Truck crashes are extremely dangerous and cause tremendous damage, as can be seen in this photo from one of my cases. It's unfortunate that most truck crashes are due to driver error and are preventable. In this chapter I will discuss some of the common causes of truck accidents and the reasons why they are so dangerous.



Driver fatigue is one of the leading causes of truck crashes. Truck drivers have high-stress jobs that involve high pressure. Trucking companies typically require drivers to deliver freight to far away destinations within short periods of time. Consequently, truckers drive long distances with short breaks and little sleep. Long-distance routes keep

truck drivers behind the wheel for several days at a time and small sleeper cabs result in low-quality sleep. Drivers are therefore slower to react and have diminished concentration. Some truck crashes even result from drivers falling asleep behind the wheel. While laws regulate the number of hours drivers can work per shift, some trucking companies do not comply and encourage their drivers to exceed the permitted hours.

Another major cause of truck wrecks is improper training. Too many truck companies fail to provide adequate behind-the-wheel, supervised training. We have handled many cases involving little or no training following a driver getting her Commercial Driver's License (CDL). I have had drivers testify to no training, to little training, or one driver saying the majority of his training revolved around product handling, and he only received about a week of supervised behind-the-wheel time. Sometimes drivers fail training tests and are not reeducated on the driving problem they have – Or drivers fail a portion of their CDL test. Unfortunately, some trucking companies rush through the training process so that they can get their drivers on the road quicker. They look to hire young and inexperienced drivers who they can pay less, and then send them out on the road without proper training. Other companies fail to properly investigate their employees' driving records and hire unqualified drivers. Shortcuts to save money usually cost more in the long run.

Speeding, distracted driving, and substance abuse are also among the lead causes of truck crashes. In effort to meet tight deadlines, truck drivers often speed or drive too fast for weather conditions. They bear down on smaller vehicles from behind and cause them to swerve into other lanes. Truckers often become bored on long routes and are tempted to look at their phones. Moreover, a recent study shows that approximately thirty percent of truck drivers admitted to taking illegal substances on the job. It is not uncommon for

drivers to take amphetamines and stimulants to stay awake while driving. We know all of these Rule violations because we see them on the road. How many close calls or bad wrecks have we personally seen?

The other leading cause has to do with the mass of trucks. Over the road and even local delivery trucks usually weigh between 60 and 80,000 pounds. Compare this to your 6,000-pound sedan. So, trucks take longer to stop, decelerate slower and have more inertia and force (Force = mass times acceleration). Many Rules of the Road and good training require truck drivers to be watching 15 seconds ahead of themselves, to keep extra distance from the vehicle in front of them, stop sooner, go slower in inclement weather, use both their braking systems, drive defensively and be prepared to stop at turning traffic lights and thick traffic.

So why are truck crashes so dangerous? Well, again because of the sheer size and weight of tractor-trailers. Trucks are substantially heavier than other vehicles. The NHTSA defines a large truck as any truck with a gross vehicle weight rating greater than 10,000 pounds. However, large tractor-trailer trucks can weigh up to 80,000 pounds. On the other hand, the U.S. Environmental Protection Agency estimated that the average weight of a car in 2018 was 4,094 pounds, with compact cars weighing on average 2,919 pounds. As you can see, large tractor-trailers can weigh about 20 times heavier than cars.

With such a great weight disparity between large trucks and cars, it should come as no surprise that smaller cars are at a serious disadvantage in collisions. In fact, according to the EPA, every 1,000-pound disadvantage increases the risk of fatality by forty-seven percent. When a large truck and car collide, the car sustains significantly more damage and its occupants are more likely to be injured or killed than the truck driver. As mentioned in

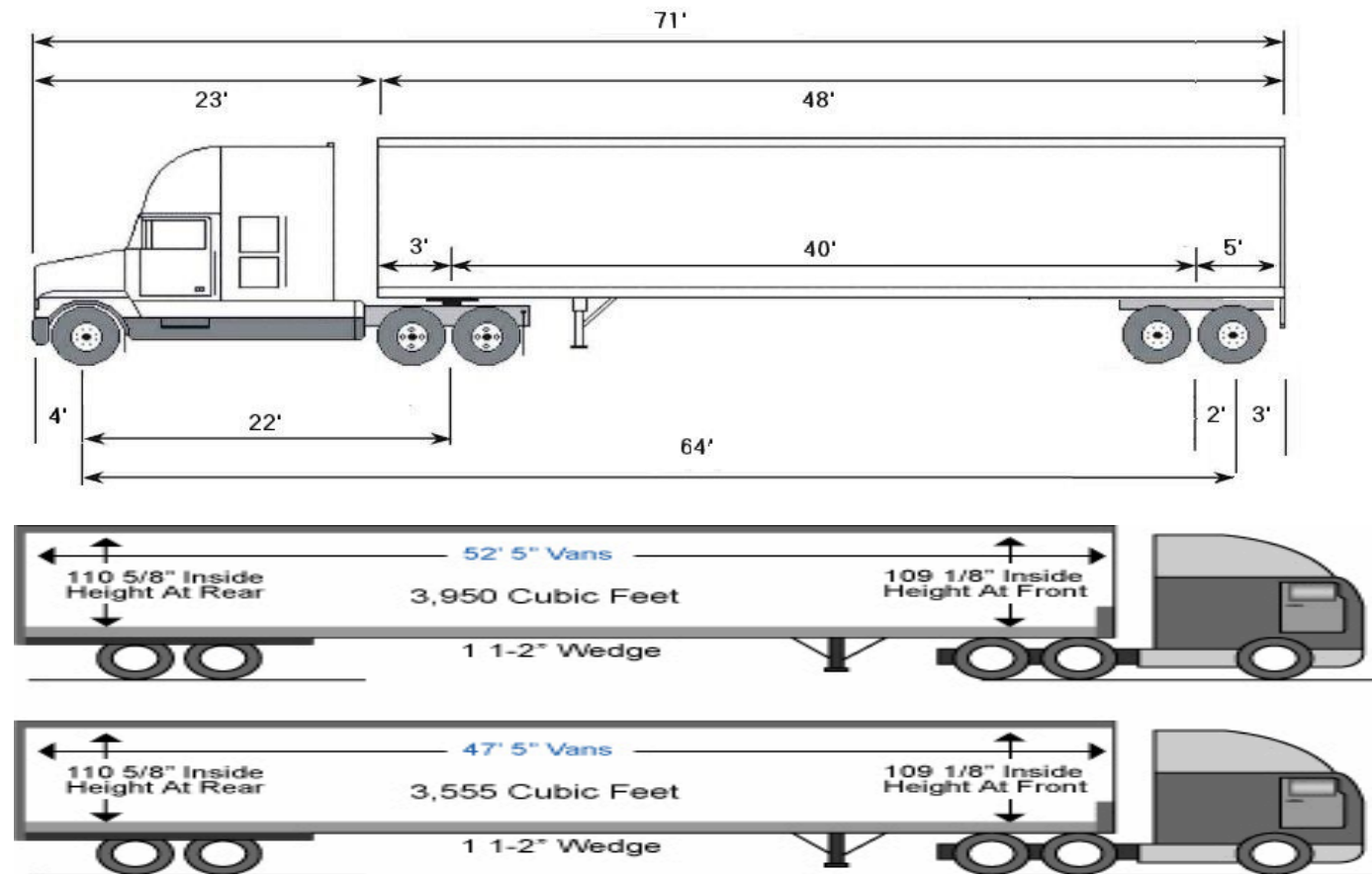
the Introduction, data published by the NHTSA shows that seventy-one percent of people killed in truck crashes in 2018 were occupants of other vehicles, not the truck.

Another factor that makes truck crashes so dangerous is that the enormous weight of large trucks requires greater breaking distances to come to a complete stop. So reacting sooner to stopped cars and red lights, giving more space to the vehicle in front of them and watching the road 10 to 15 seconds in front of them are requirements for safe drivers. These are not an option. A tractor trailer's enormous weight also causes them to accelerate slowly, and truckers often misjudge the amount of time it takes to make turns or merge with traffic.

Trucks are also tall, making them unstable compared to cars, especially when their trailers are loaded improperly. Improper loading can cause top-heavy cargo to shift in transit, which can lead to the truck overturning or losing control. Additionally, the height of trucks makes them more vulnerable to rollovers from swerving, hard cornering, and strong gusts of wind. When trucks take evasive maneuvers, they can yaw and slide sideways, causing reduced traction.

Finally, the last physical aspect of truck that makes them different is their length. Their substantial length creates large blind-spots for the truck driver on all sides of the vehicle. These large blind-spots are often referred to as "no zones." While truck drivers are trained to pay close attention to traffic entering and leaving the "no zones," this often does not happen. Additionally, the length of trucks requires truck drivers to make wide swing turns which can catch other motorists off guard. Cars caught in these blind spots get hit – whether from a truck changing lanes, taking a turn or backing up. Smart drivers pass trucks quickly and do not linger in their blind spots. It is kind of sad that car and

motorcycle drivers have to always be vigilant for dangerous truck drivers not minding their blind spots.



## **CHAPTER 2:**

### **TRUCK CRASH INJURIES ARE SERIOUS AND REQUIRE PROPER MEDICAL CARE**

Truck crash injuries can be devastating and life-altering. If the wreck doesn't kill the victim, it often leaves him or her with severe injuries that can persist for the rest of their lives. People have challenges in navigating the medical side of their crash – they may not have health insurance, n=may never have experience treating injuries like this, how much treatment to get with what kind of doctors, and when do decide more treatment will not help and they should surrender to the chronic and permanent nature of their injury. Unfortunately, many truck accident victims will experience permanent pain and suffering and life-long medical conditions and disabilities that will continue long after their legal case is concluded. (But remember the law is designed to accommodate that).



If you are acutely injured after a truck crash, ask to be taken by an ambulance to a medical provider. If you are hurt but do not think it is bad enough for an ambulance, tell the other driver and the police officer you are injured but do not want an ambulance. If this is an accident where you think you are fine, and you walk/drive away but have pain later, get immediate medical attention. Very often, we encounter people who deny or refuse medical attention at the scene of the accident, but hours later or the next morning they are in severe pain. If that occurs, do not worry that you did not get medical attention at the scene. Rather, go to an emergency room; call your primary care physician and get treatment; go to an urgent care; or go to a local chiropractor versed in acute auto care.

Assess your level of pain and symptoms you are experiencing and make the best decision you can about seeking appropriate care. Very often your primary care physician knows you and can adequately handle your claim. Urgent care facilities now provide rapid, quality care and can quickly see you for an evaluation, x-rays and prescriptions. If you are in acute pain or none of those options are available, go to an emergency room. Many times, physicians at all of these types of locations will order x-rays, prescribe an anti-inflammatory, and recommend follow up treatment if the symptoms persist. Sometimes they will prescribe a pain reliever or a muscle relaxer.

When you get medical care, provide a clear concise history of the accident: “I was rear ended and thrown around in the vehicle,” “the other driver ran a red light and hit the side of my car” or “the truck swerved into my lane and hit the front passenger side of my car which made my truck spin.” Tell them the symptoms you had and when they started, i.e., right after the wreck. Make sure you advise the doctor of all your symptoms. The broken leg may be really hurting, but the sore neck and numbness in the arm is important

too – and may be a more serious injury. Advise how the pain changed and how it may get worse and better with activity. Explain what you can and cannot do because of the injury.

Fill all prescriptions and get the necessary medication you need to get better. Then, after your first visit, follow up with additional medical care if you need it. If your primary care doctor or another physician orders you to go have physical therapy, do it. If they are unsure about recommending a physical therapist or a chiropractor, rest assured that chiropractic physicians are capable medical professionals and have many unique abilities to treat people after truck accident crashes - do not be afraid to use them. Continue to consult with your primary care physician about the course of your medical treatment. If your care is not being monitored by a primary care physician, or an internist, consult with the chiropractor or physical therapist about what you should do next. If you are not getting relief from physical therapy, you may need to see an orthopedic, neurologist or another specialist. If you are not getting relief from chiropractic care, you may need an MRI or other type of test to see if there are soft tissue problems.

Many times, trucking accidents cause injuries to the intervertebral discs between our spine vertebrae. This can occur in the neck, mid or low back areas. MRI and CT scans detect these injuries well. Many times, orthopedic surgeons will follow up care and treat a person conservatively. They may order strengthening exercises and other things to try to ameliorate the symptoms from a soft tissue and/or herniated disc injury. Sometimes an injection or other intervention by a pain specialist is necessary to control the pain. Surgery is usually the last option when the pain is unbearable or life activities need to be resumed. Many people get permanent relief from constant pain with surgery. This can be life changing and can enable folks to go back to work and enjoy life again. Most people need to

work and take care of their families, and unfortunately sometimes surgeries are only a last resort to assist to their return to normalcy.

Remember, do not minimize your injuries to your doctor. Tell the nurse and doctor everything that is wrong with you and try to be consistent in describing your pain and physical problems. Do not think you are too tough to go to additional specialists or have further diagnostic treatment. This is your one and only chance to recover from the negligence of what the other driver inflicted on you, and you want to ensure that you know the full extent of your injuries and the medical treatment necessary to remedy them. Males can tend to want to be tough and not express the extent of their pain, while women sometimes do not want to be a bother and want to take care of others so they downplay their injuries.

One of the most prevalent injuries I see my truck crash clients suffer from is back and neck injuries. These injuries can range from minor neck pain to dislocated spinal discs. Neck and back injuries often keep victims out of work and result in lost wages.

### **Anatomy of Neck and Back**

Our necks and backs consist of bones, nerves, muscles, ligaments and tendons. Our spine spans from the length of our neck to our lower back and is broken down into sections: the cervical spine, thoracic spine, lumbar spine, sacrum (or sacral region) and the coccyx (or tailbone). The spinal cord is the highway that allows our message center (the brain) to communicate and control the rest of the body. Any interference or irritation wreaks havoc on our ability to function normally and can be a significant source of pain.

## Cervical Spine

The cervical spine consists of the cervical vertebrae with cervical discs in between. It supports the head and provides the flexibility you need to turn your neck from side to side and to rock it from front to back. The cervical discs, composed of collagen and ligaments, carry the bulk of the workload by acting as shock absorbers between the cervical vertebrae, holding the vertebrae together and allowing for the movement of the neck. This area of the spine also provides the path for blood flow to the brain. When you hear about C1, C2, C3, C4, C5, C6, and C7, you are hearing about the area known as the cervical spine.

Trauma to the cervical spine and nerves can result in pain, numbness, tingling or the functional loss of the diaphragm, shoulders, biceps, arms, wrists, hands and fingers.

## Thoracic Spine

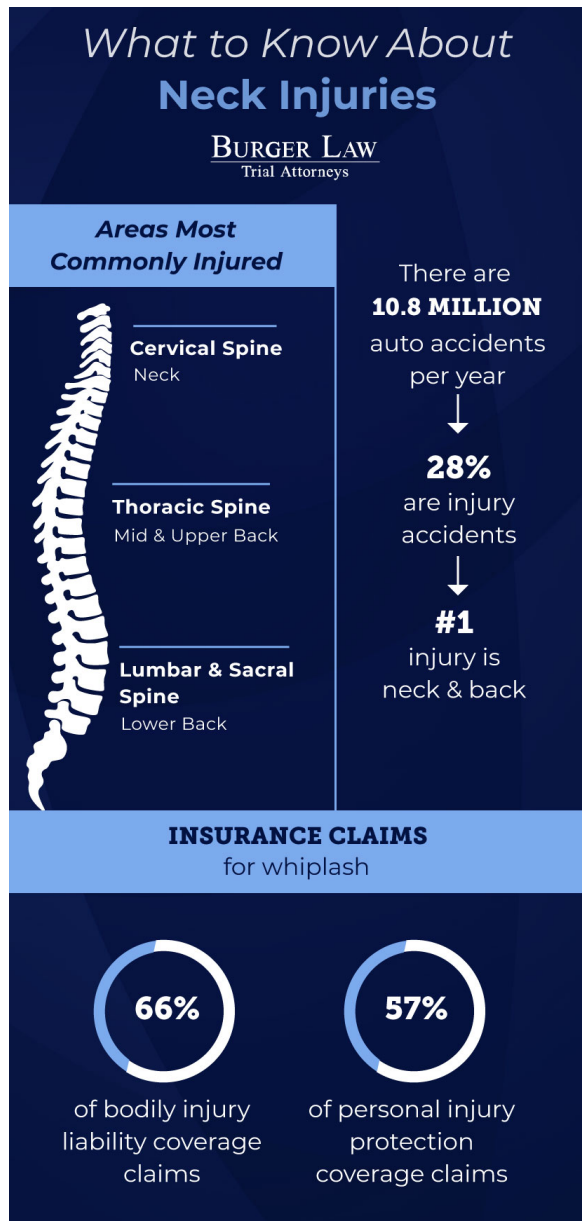
The thoracic spine consists of twelve vertebrae that hold the body upright and, combined with our rib cages, protects the vital organs located in the chest. The thoracic discs are thinner in the thoracic spine, causing this area of the spine to have limited flexibility. The spinal canal is at its smallest in this area of the back, making the spinal cord more vulnerable to damage if the thoracic spine is injured. The vertebrae T1, T2, T3, T4, T5, T6, T7, T8, T9, T10, T11, and T12 are positioned in this area of the spine.

Trauma to the thoracic spine can cause upper **back pain and nerve injuries** that affect the shoulders. Other muscles compensate for injuries to this area of the spine, causing pain to resonate throughout the upper body.

## **Lumbar Spine**

The lumbar spine consists of five intervertebral segments in the lower back and provides the power and flexibility necessary to lift, twist and bend. The vertebrae in the lumbar spine are connected to the back of the spine by facet joints. These joints allow for flexibility in the lower back. Nerve roots branch out and continue down all the way to the feet after the spinal column ends between the thoracic and lumbar spine. Because this section of the spine bears the most weight and provides the most flexibility, it is more vulnerable to injury. The vertebrae L1, L2, L3, L4, and L5 are located in this area of the spine.

Trauma to the lumbar spine can cause pain, tingling and loss of range of motion in the lower back, legs, ankles, feet and toes. This area of the spine is also most prone to disc herniation and spondylolisthesis. A herniated disc occurs when the gel-like inner core of the intervertebral disc leaks out and puts direct pressure on the nerves that run through the spine, also referred to as nerve impingement. Spondylolisthesis occurs when a vertebra slips over the one below it causing compression on the nerve root.



### Sacrum

The sacrum consists of five segments of fused bone and is located between the lumbar spine and the tailbone. This region supports the back of the pelvis and forms the sacroiliac joints at the hip bone. The sacral nerves and blood vessels run through this area of the spine. Since it is fairly stable, most pain that arises from trauma to this region occurs where the lumbar spine connects to the sacral region.

## **Coccyx**

The coccyx or tailbone consists of four fused vertebrae and is located at the base of the spine at the bottom of the sacrum. This part of the spine serves as the shock absorber for your back when you are in a sitting position.

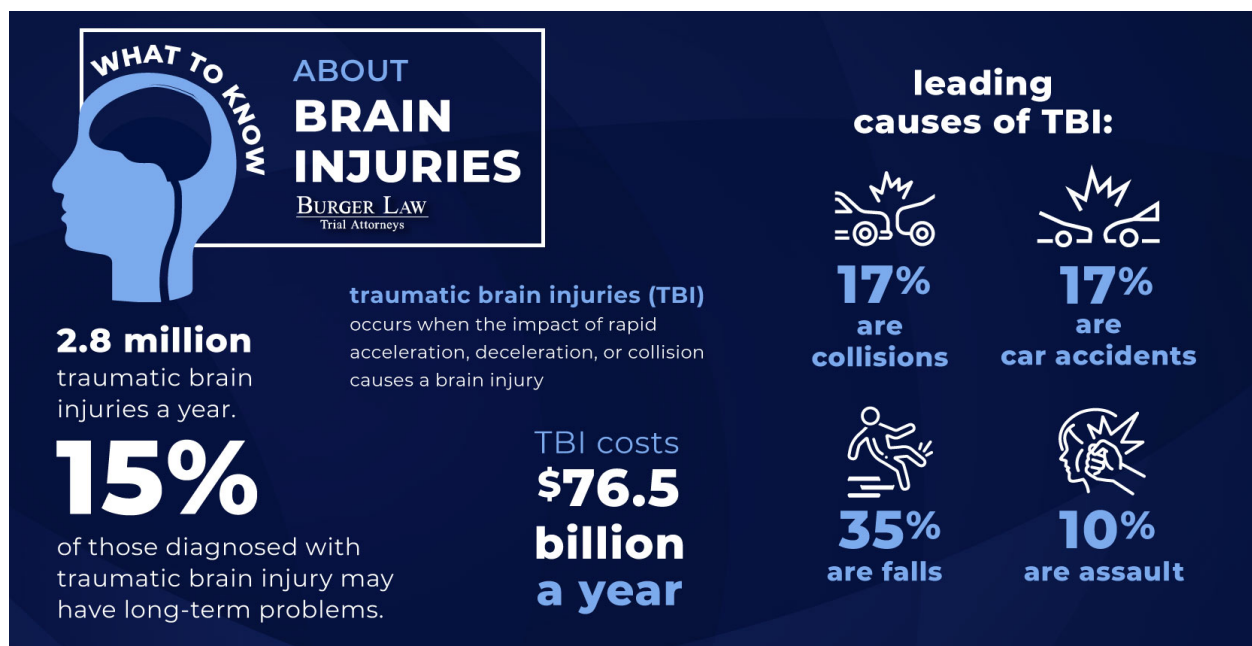
## **Treatment Options**

Most physicians, chiropractors, and physiatrists like to initially recommend conservative treatment when an injury occurs to the neck or back. Most injuries get better within six weeks and typically require conservative measures like physical therapy and anti-inflammatory medications.

Epidural steroid injections are considered a more aggressive form of treatment. Steroids do not heal the back but provide enough relief from inflammation to allow the back to heal.

If neck and back pain is not relieved with conservative measures, your doctor may refer you to an orthopedic spine surgeon or neuro spine surgeon for an evaluation of surgical options. Common neck and back surgeries include fusion surgery, vertebroplasty, laminectomy, and microdiscectomy. Surgical options can be minimally invasive, but some surgeries are more extensive and require more of the surgical site to be exposed. The decision to move forward with surgery is entirely elective because of the invasive nature of the treatment and the inability to guarantee results. Some people who undergo a surgical procedure may require additional surgeries in the future. Discuss the success rates of your recommended procedure with your doctor.

Head injuries are also common among my truck crash clients. Head trauma can result in an injury to the brain, such as a concussion. Concussions can manifest in symptoms such as nausea, confusion, vision problems and cognitive issues such as slow word recall. Brain injuries are not always obvious at first and can occur even without direct trauma to the head from whiplash or rapid acceleration or deceleration. Unfortunately, head injuries can be tragic and some people never fully recover from them.

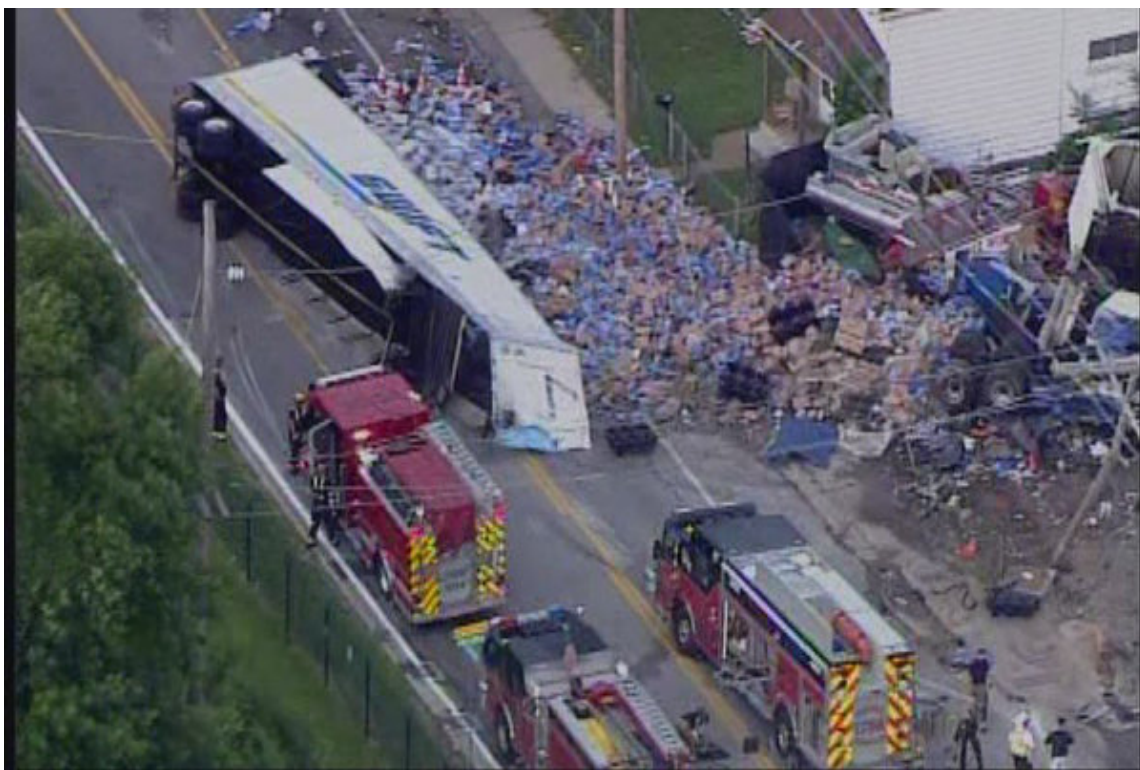


Some other common injuries I see my clients suffer from include fractures and broken bones, internal damage to organs, lacerations and cuts, seatbelt injuries such as whiplash and burns, spinal cord injuries and paralysis. Regardless of the injury, it is important that a truck crash victim receive the proper medical attention.

## **CHAPTER 3:**

### **WHAT DAMAGES CAN I RECOVER IN MY TRUCK CRASH CASE AND WHO CAN I RECOVER FROM?**

A truck accident can leave survivors with expensive medical bills, loss of work and wages, permanent injuries with chronic symptoms and pain and suffering. All these damages can continue in the future as well. Injuries can be life changing and there can be other costs related to a truck crash as well. To determine what damages a person is entitled to, we look to a State's damages law. We file our cases in state court and usually fight removal to federal court. We have litigated cases in States all across the country. In each State, the damage law is usually condensed most relevantly in a jury instruction. These are court approved instructions given to juries accurately stating the law. Using Missouri and Illinois jury instructions will illustrate the variety of possible damages for which you can recover.



The Missouri Approved Jury Instructions state, “If you find in favor of plaintiff, then you must award plaintiff such sum as you believe will fairly and justly compensate plaintiff for **any damages** you believe plaintiff sustained [**and is reasonably certain to sustain in the future**] as a direct result of the occurrence mentioned in the evidence.” (MAI 4.01 [2002 Revision]). The Missouri Supreme Court has explained, “It is Missouri’s well-settled rule that a plaintiff is entitled to **full compensation for past or present injuries** that the plaintiff has shown by a preponderance of the evidence were caused by the defendant.” *Swartz v. Gale Webb Transp. Co.*, 215 S.W.3d 127, 130-31 (MO.Banc 2007).

The Illinois Pattern Jury Instructions state, “If you decide for the plaintiff on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate him for **any of the following elements of damages** proved by the evidence to have resulted from the [negligence] [wrongful conduct] [of the defendant], [taking into consideration (the nature, extent and duration of the injury) (and) (the aggravation of any pre-existing ailment or condition)]. (IPI 30.01). The elements of damages are then listed in IPI 30.04 through IPI 30.20 as follows: **disfigurement; disability/loss of normal life; increased risk of future harm; shortened life expectancy; past and future pain and suffering; emotional distress; past and future medical expenses; past and future loss of earnings or profits; past and future caretaking expenses; damage to personal property; and damage to real property.** Illinois damage instructions contain more detail and guidance for juries in assessing damages.

I understand that reading the Missouri and Illinois jury instructions can be cumbersome, but here is the main takeaway: when you have been injured in a truck crash, you should be compensated for all of your injuries and expenses resulting from the negligence of the truck driver and the trucking company. Not just 50% or 75%. The damages available for claimants in a truck crash case are medical bills or expenses, lost wages or future earning capacity, pain and suffering, disability and disfigurement, emotional trauma and sometimes punitive damages

- **Medical Expenses** – how much you paid for medical care and medical accessories associated with treating injuries from the accident
- **Lost Wages** – how much did you make before the accident? How many hours did you miss out on while recovering from your injuries?
- **Pain and Suffering** – have you paid for therapy to cope with the aftermath of the accident? Do you have PTSD or another emotional or mental condition as the result of the accident?
- **Disability/Disfigurement** – compensation that can't take away the immeasurable pain of living with a permanent disability, but can help make chronic pain, disabilities, and other conditions more manageable

Medical expenses can include a visit to the emergency department, the ambulance or airflight ride, a hospital stay, surgery and anesthesia costs, hardware implanted, physical therapy and rehabilitative resources, diagnostic tests, pain management or necessary in-home care services. Under Missouri and Illinois law, you can financially recover any costs that you incurred while seeking medical care that is appropriate and necessary for the treatment of your injuries.

Lost wages include any income you were not paid as a result of missing time from work due to your injuries from the truck crash. Additionally, you may recover the value of your future earning capacity that is diminished due to any disability you suffer because of your injuries caused by the truck driver's negligence. We usually do not need an economist to prove these but sometimes we ask experts to help in more complicated analysis.

You may also recover money for pain and suffering that you experienced due to the truck crash. This category of damages encompasses physical pain, trauma, and stress that so many truck accident victims experience long after the date of the accident. This usually should be the biggest component of damages and what causes the most anguish. Pain can be intense, chronic, unabating and can destroy lives or the things people love to do in life. Sometimes good pain management, surgery and medication can alleviate pain, but sometimes not. Even if abated, intense pain for long periods warrants compensation to make amends.

Disability is what a person can no longer do because of the truck crash. These include paralysis, limps, lack of full use of a limb, brain and memory problems, chronic pain that prevents activity, loss of muscle strength, loss of range of motion, depression and PTSD. And disfigurement is scarring or other visible signs of injury (amputation).

Property damage for which you can recover after a truck crash includes damage to your vehicle caused by the truck driver's negligence, as well as any other property of value that is lost or damaged in the crash. We encourage clients to resolve their own property damage claims as we do not like to take a contingency fee in cases where the client is already not going to get good value for their vehicle.

In the unfortunate and devastating event that a spouse, parent or child has been killed in a truck crash, the surviving spouse, parent or child may recover damages for

wrongful death. The Missouri Approved Jury Instruction on Wrongful Death provides, “If you find in favor of plaintiff, then you must award plaintiff such sum as you believe will fairly and justly compensate plaintiff **for any damages** you believe plaintiff [and decedent] sustained [and plaintiff is reasonably certain to sustain in the future] as a direct result of the fatal injury to [the decedent].” (MAI 5.01).

The Illinois Pattern Jury Instruction on Wrongful Death states, “If you decide for the plaintiff on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate the lineal next of kin, e.g. parent of the decedent **for the pecuniary loss** proved by the evidence to have resulted to the lineal next of kin from the death of the decedent.” (IPI 31.01). The jury instruction goes on to state that “pecuniary loss” may include **loss of money, benefits, goods, services, and society**. Factors that an Illinois jury may consider when determining the pecuniary loss include: what money, benefits, goods, and services the decedent customarily contributed in the past; what money, benefits, goods and services the decedent was likely to have contributed in the future; the decedent’s age; the decedent’s sex; the decedent’s health; the decedent’s physical and mental characteristics; the decedent’s habits of industry, sobriety, and thrift; the decedent’s occupational abilities; the grief, sorrow, and mental suffering of next of kin; and the relationship between lineal next of kin and the decedent. (IPI 31.01).

Now that you know what damages you can recover, you may be wondering who will be responsible for paying your damages resulting from a truck crash. In any truck accident, there are two main target defendants – the driver and the company he is driving for. The truck driver could have been negligent in operating the truck, exceeding federal restrictions regarding hours of service, carelessly transporting hazardous materials, or

overloading cargo. What's more, the truck company who employs the truck driver also could be responsible for paying your damages.

Truck companies may be held liable for negligently failing to properly train the truck driver, failing to follow licensing requirements, or failing to conduct background checks and confirming employee driving records, among other reasons. Even if the trucking company was not itself negligent, it can be held vicariously liable for the acts of its truck driver if the truck driver was negligent in performing his or her job duties. Finally, the truck manufacturer may be responsible for paying your damages if the truck accident was caused by faulty parts or equipment installed by the manufacturer.

When it comes to your recovery from a truck crash, here is the bottom line: while the law can never ensure that you fully heal from your injuries or losses, it can be used as a mechanism to recover money that will compensate you for your injuries and losses. The truck crash lawyers at Burger Law will vigorously fight for you to ensure that you get the maximum recovery. We will also aggressively investigate your case to make sure all negligent parties are held responsible and fairly compensate you for your injuries.

**CHAPTER 4:**  
**CLAIMS YOU SHOULD MAKE IN A TRUCK CRASH CASE**



When someone gets involved in an accident it can be easy to look at only the basic potential causes of the crash. For example, the driver's actions, the truck's maintenance, road conditions, or weather. While all of these factors should be thoroughly investigated and assessed, it is important to consider the negligence of not just the truck driver, but also the truck driver's employer. The employer is ultimately responsible for hiring and training its truck driver, and for ensuring that its truck driver has received the proper licenses. Of course, the truck driver never would have been on the road if not for the employer. More

importantly, the real reason for the crash may be bigger, more systems problems with the truck company that can lead to more injury and/death on American roads.

Lawyers like the author investigate these claims and root out all the negligence that contributed to a crash. Of course, you should contact an experienced truck accident attorney to investigate the driver and the company they worked for if you are involved in an accident. Remember, often it is not just the truck driver's actions that was the core cause of the collision that caused your injuries.

An experienced attorney will investigate the driver's background and see if the driver was fit for driving that type of truck or if they had previous accidents or traffic violations. If it is discovered that the truck driver had a poor driving record, you may have a claim against the company for negligent hiring or retention.

### **Negligent Hiring**

State and federal laws require trucking companies to practice due diligence when hiring and supervising commercial drivers to prevent trucking accidents. Any vehicle that weighs up to 80,000 pounds require drivers to have extensive training and special licenses to operate. Qualified drivers must demonstrate that they have a history of safe driving and are medically fit to operate commercial vehicles. However, trucking companies commonly hire unqualified drivers to save money, putting the public at great risk. Sometimes, these companies knowingly hire unqualified drivers so they can pay them less. Further, companies are required to, and should, do a deep dive into driver's background and their unsafe driving histories. Lastly, they may fail to properly train and supervise drivers. These negligent acts, if taken by a trucking company, can cause serious truck accidents and catastrophic injuries to other motorists.

When it is discovered that trucking companies failed to meet reasonable standards when hiring drivers, they can be held liable for negligent hiring. Examples of Negligent Hiring may Include:

- Hiring an unqualified truck driver
- Hiring a driver with a history of unsafe driving
- Hiring a driver with a history of drug or alcohol abuse
- Hiring a driver without a valid driver's license or commercial license
- Hiring a driver who has a history of auto accidents

### **Was the Driver Whose Truck Wrecked into Me Caused by Negligent Hiring?**

During the hiring process companies must conduct thorough background checks on new commercial drivers and ensure they have valid commercial driver's licenses (CDLs). These background checks are critical in identifying applicants with histories of substance abuse, prior serious crashes or disqualifying medical conditions. An employer may be liable for negligent hiring if the employer knew or should have known of the employee's dangerous proclivities and the employer's negligence was the proximate cause of plaintiff's injury. *Gaines v. Monsanto Co.*, [655 S.W.2d 568](#), 570 (Mo.App.1983).

### **What Records Should Employees Pull When Doing Preemployment Screening?**

- DQ files: Driver qualification files (DQ files) could contain information on a driver's prior work experience, license suspensions, crashes and moving violations. In addition, DQ files contain regularly updated Department of Transportation (DOT) medical examination certificates. Regulations also require companies to maintain current DQ files of drivers they employ.

- Substance abuse records: Trucking companies must conduct preemployment drug screening tests on applicants. In addition, companies may also pull drug test records from previous employers going back three years.
- Medical exam records: Trucking companies must hire medically qualified drivers. Certain health conditions pose a significant crash risk. For example, workers with untreated sleep apnea may be more likely to cause accidents due to drowsy driving. In other cases, medical conditions may disqualify drivers from holding a commercial driver's license (CDL).
- Is the driver's CDL current and up to date?

If you have been involved in a truck crash it is important to find an attorney capable of obtaining these records and other documentation concerning a driver and the trucking company. An experienced attorney will gather evidence of a company employed driver with histories of failed drug tests, disqualifying medical conditions or prior crashes, which can be used to show negligent hiring. Additionally, companies who employ truck drivers must keep detailed documentation on commercial truck drivers, such as DQ files or drug testing records. A factor determining if companies practiced the proper due diligence during the hiring process is whether any important documentation is missing.

As case law provides, an employer has a duty to refrain from retaining or hiring an employee that poses a threat to other persons that the employee may be exposed to on the road. An action for negligent hiring or retention requires that the Plaintiff plead and prove the following elements:

1. The employer knew or should have known that the employee had a particular unfitness for the position to create danger or harm to third persons; and

2. That such particular unfitness was known or should have been known at the time of hiring or retention; and
3. That the particular unfitness was the proximate cause of the plaintiff's injury.

Negligent hiring can arise from different actions the employer took when hiring a truck driver. An example is when the company hires a driver who does not qualify for the position or does not have the proper certifications required to drive the vehicle they are hired to drive. Another example is when the company might not have conducted a background check on an employee, thereby never knowing the prospective driver had a DWI or other traffic violation on their record. Companies also often fail to follow regulations created by the Federal Motor Carrier Safety Administration when hiring a new driver. For instance, companies sometimes fail to conduct a pre-employment alcohol and drug test. Even if an applicant has a clean record and the company followed all protocols, you may still be able to prove that the driver was inexperienced for the type of truck, cargo, and routes they had to drive.

### **Negligent Retention**

The company's responsibility to provide safe, responsible, and qualified drivers on highways and local roads does not end at the hiring process because employers have a continuous duty to keep the public safe. A key responsibility for companies is to ensure that their drivers at all times remain well-trained and have up-to-date licenses and certifications throughout their employment. The Company must also ensure that if a driver loses privileges to drive a certain type of vehicle or cargo, the driver is not assigned that vehicle or material until they again have such privileges. The elements of negligent retention are the same as for negligent hiring. *Gibson*, 952 S.W.2d at 246 (Mo. banc 1997).

The most common sign of a company committing negligent retention is when a truck driver is ticketed for traffic violations during his or her employment or has received complaints from clients, other drivers at the company, or other drivers on the road and is retained by the Company. Trucking companies are also heavily regulated by the FMCSA and are required to keep driver records that include such information. A driver who has been convicted of a DWI or has multiple speeding or other traffic violations on his or her record is usually not the best fit to drive a heavy, dangerous vehicle and should not be behind the wheel of one.

Additionally, the FMCSA requires drug and alcohol testing and if a company fails to test its drivers, or does nothing when a driver fails a test, it can be evidence of negligent retention.

If you believe a company hired or retained an unqualified truck driver behind the wheel of a major commercial vehicle, you should contact an experienced attorney.

### **Was Proper Supervision Provided to A Negligent Driver?**

Trucking companies are required to hire qualified drivers and properly supervise drivers to ensure they are acting in the best interest of public safety. A cause of action for negligent supervision may be established when: A master is under the duty to exercise reasonable care so to control his servant while acting outside the scope of his employment as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them if (a) the servant (i) is upon the premises in possession of the master or upon which the servant is privileged to enter only as his servant, or (ii) is using a chattel of the master, and (b) the master (i) knows or has reason to know that he has the ability to control his servant, and (ii) knows or should know of the necessity and opportunity for exercising such control. RESTATEMENT (SECOND)

OF TORTS Section 317 (1965); Gibson, 952 S.W.2d at 247; Conroy v. City of Ballwin, [723 S.W.2d 476](#), 479 (Mo.App.1986).

Proper supervision can eliminate or minimize the risk of a truck wreck due to driver error.

Negligent Supervision Examples:

- **Supervisors allow drivers to violate hours-of-service rules.** Drivers must show compliance with hours-of-service by keeping logbooks that supervisors must monitor.
- **Trucking companies fail to provide adequate training for new CDL drivers.** New hires must receive training to recognize potential hazards and operate their vehicles. For example, drivers must know how to check tire pressure or properly secure loads from shifting before taking solo assignments.
- **Failing to drug test drivers who caused accidents that result in injuries or deaths.** Federal regulations require trucking companies to administer drug tests to a driver after a truck wreck.
- **Companies continue to employ dangerous drivers.** In some cases, companies may hire qualified drivers who then commit grievous violations during their employment. For example, a driver may test positive for a controlled substance after causing an accident. Employers who continue to allow drivers to operate a truck after a positive test like this are violating the law, as well as placing motorists at risk for truck crash injuries.
- **Companies continue to employ individuals with health conditions that make operating a commercial vehicle dangerous.** If drivers show signs of

dangerous or disqualifying health conditions, such as alcoholism or sleep apnea, then the employer must investigate further and take appropriate action.

Employers can be found liable for damages when an incompetent or unfit driver causes a truck accident. Finding a good attorney is important in order to properly investigate both the driver and the company to determine if negligent supervision caused or contributed to injuries of a loved one's wrongful death or injury.

In the Appendix 1 I attach to this book, I have included an example of a complaint we filed on behalf of our client, in which we alleged claims discussed in this chapter, among others.

### **Negligent Training**

Even after a driver gets their CDL, they often need additional training and safety reminders. Truck companies have a duty to train their driver to make sure they are safe on the road. Many companies do (and should) formal training procedures where they teach and remind drivers about the rules of the road and procedures. Drivers need to learn particulars about routes, delivery destinations, dangerous road conditions and company procedure. Good trucking companies have robust training and make sure the drivers that they put on the road are safe. Often, a trucking company's insurance policy requires them to have training procedures as well.

In any profession, we have to continue to get training to remind us of the basics of our profession and hone our talents. I do this as a lawyer and truck drivers should do the same. For some examples of truck driver training, go to [www.trucktraining.com](http://www.trucktraining.com) and [www.truckinfo.com](http://www.truckinfo.com). There is a great article here about how truck driver training improves

safety, minimizes harm to fleet vehicles and makes the company run more products.

<https://www.wexinc.com/insights/blog/fleet/truck-driver-training/>

It is a no brainier - extra driver training is worth the money and saves the company money in the long run. Companies that take short cuts and do not train their truck drivers are the types of companies that have problems. There are too many truck drivers and too many roads in the United States to not have a very well-trained driver. Many of the accidents are contributable to lack of training on truck driving in the United States.

In litigation, the driver training is inquired by us as lawyers. We examine this to see if the truck driver had good or adequate training and if they kept up with continued training. We often find deficiencies or lack of training programs. We hire experts who are recognized in the trucking industry to tell a jury about the type of training that a company should have and that many do have in the United States. We are not trying to hold trucking companies to a too high or unreasonable standard - just what a normal adequate training should look like. If truck companies do not have it and training deficiencies contributed to an accident, truck companies should be held responsible.

It is not just truck companies - drivers should be responsible for their own training and keep it up. The commercial drivers guide requires drivers to keep a log of their hours, pre-trip inspections to make sure their vehicle is safe and to obey the Rules of the Road for truck drivers. Similarly, truck drivers have to be responsible for their own training. They need extra tips or extra training on how to back up the trailer, how to drive in inclement weather, how to drive in urban setting, etc. If so, that truck driver should go and do this. Many of these training programs are offered for free or very low amounts if you look on Google.

Some of our litigation and legal claims that focus on driver education also seem to improve safety of roads in our community. Every time we pursue a claim against a trucking company and talk about hiring drivers, retaining drivers and training of drivers, we are trying to make these trucking companies safer. If you talk to truck companies, they want to get the bad drivers and companies out of their industry as well. No company likes to have bad drivers who will bring down their reputation as a whole. Focusing on driver training as well as the retention and hiring is an attempt to keep our roads safer as well as to hold truck drivers and their employers responsible when they fall below the standard to which they should abide.

## **CHAPTER 5:**

### **FEDERAL TRUCKING REGULATIONS: VIOLATIONS FOR WHICH A TRUCK DRIVER AND HIS COMPANY MAY BE LIABLE**

Now that I've discussed a few of the legal theories you can pursue in your truck crash case, I want to familiarize you with the federal laws and regulations that truck drivers and trucking companies are required to follow. This chapter is intended to provide an overview of major federal regulations that apply to all truck drivers and trucking companies. The regulations I discuss below are designed to increase safety in the trucking industry. It is only once these rules of the road are violated that you have a claim for negligence against the truck driver and trucking company.

The Federal Motor Carrier Safety Administration (FMCSA) has passed many trucking laws and regulations in an effort to promote safety in the trucking industry. Title 49 of the Code of Federal Regulations provides the laws and regulations that govern the entire trucking industry in the United States. These regulations can be found at <https://www.fmcsa.dot.gov/regulations>. This chapter will discuss the major points of the federal trucking laws and regulations.

#### **Licensing Requirements**

Part 383 of the Code of Federal Regulations provides licensing requirements for truck drivers, as well as penalties for violating those requirements. Part 383 only allows truck drivers to have one driver's license issued by their home state. The truck driver's license will only be issued after the truck driver has successfully passed knowledge and skills tests. Hazmat carriers who transport hazardous materials are usually required to successfully complete additional tests before receiving a valid license.



When investigating your case, Burger Law always checks to make sure the truck driver had the appropriate licensing to operate their truck. If the truck driver was not licensed properly, Burger Law can point to this as evidence of negligence.

### **Special Training and Physical Requirements**

Federal regulations require truck drivers to complete special training and pass physical examinations every two years. Part 382 prohibits truck drivers from reporting to work with a blood alcohol level of 0.02 or more. Part 382 also forbids truck drivers from carrying alcohol while driving, unless alcohol is part of the cargo. Truck drivers may not have alcohol or drugs that can impair driving abilities in the eight hours prior to a driving shift.

Driving under the influence of alcohol or drugs is a serious crime. Truck drivers who operate under the influence of alcohol or drugs kill and seriously injure people. We investigate these claims very aggressively and get proof of the intoxication at the outset. WE get the evidence we need to present intoxication to the court – as sometimes prosecutors cut plea deals with drunk or intoxicated drivers and it can be hard to get that evidence later. If a impaired truck driver causes a crash, they, and the truck company, can be liable for punitive damages, which obviously increases the value of the case. We investigate all aspects of truck crashes – which includes investigating whether the truck driver was impaired by alcohol in violation of Part 382 of the Code of Federal Regulations. Remember that post-crash testing is required:

Each employer is **required** to **test** each surviving driver for alcohol and controlled substances as soon as practicable **following an accident** as **required** by §382.303.

### **Hours of Service**

The FMCSA has implemented new hours of service rules due to the rise in truck accidents resulting from driver fatigue. The new hours of service laws provide that truck drivers can drive a maximum of 11 hours in a workday of 14 hours maximum. Following these shifts, truck drivers are required to take a minimum of 10 hours off duty. Truckers must keep log books of the time spent at work and behind the wheel.

When we litigate these cases, we obtain truck log books and employment records to ensure that the truck driver did not work more hours than permitted by the hours-of-service rules. If the truck driver worked excessive hours or failed to properly log their hours, Burger Law will use this evidence to bolster your case.

## DRIVER'S VEHICLE INSPECTION REPORT

TRACTOR/TRUCK		DRIVER'S REPORT	MECHANIC'S REPORT	TRACTOR/TRUCK	DRIVER'S REPORT	MECHANIC'S REPORT	TRACTOR/TRUCK	DRIVER'S REPORT	MECHANIC'S REPORT	TRACTOR/TRUCK	DRIVER'S REPORT	MECHANIC'S REPORT			
Brake Lines to Trailer .....				Frame & Assembly .....			Transmission .....			Brakes .....					
Electric Lines to Trailer				Head Lights .....			Rear Vision Mirror.....			Brake Connections .....					
Drive Line				Tail Lights .....			Steering .....			Coupling Devices .....					
Coupling Devices				Stop & Turn Lights			Service Brakes .....			Coupling (King) Pin .....					
										Doors .....					
Tires, Wheels, Rims				Clearance & Marker Lights			Speedometer .....			Hitch .....					
Suspension System				Reflectors			Other Items			Landing Gear .....					
Body				Air Pressure Warning Device			EMERGENCY EQUIPMENT			Lights – All .....					
Glass				Oil Pressure				Reflective Triangles			Roof .....				
Fuel System				Ammeter				FireExtinguisher .....			Suspension System.....				
.....CoolingSystem				.....Hom				Flags, Fuses, Reflectors			Tarpaulin .....				
Engine Leaks				Windshield Wipers			Spare Bulbs, Fuses .....			Tires .....					
Exhaust .....				.....ParkingBrakes			Tire Chains			Wheels – Rims .....					
				Dash						Other Items .....					
CONDITION OF THE ABOVE VEHICLE IS SATISFACTORY				DRIVER USE				FOR ANY DEFECTIVE ITEM				MECHANIC USE WHEN CORRECTED			
DRIVER _____ DATE _____												AND YOUR INITIALS _____			
ODOMETER END OF DAY _____				ABOVE DEFECTS CORRECTED ABOVE DEFECTS NEED NOT BE CORRECTED				DRIVER'S SIGNATURE: _____							
ODOMETER START OF DAY _____															

We have used other methods to track hours too. Many trucks now have GPS or have central dispatch facilities that track their driving. We can get that GPS data and assess for hours-of-service violations or speed. When a truck driver violates the hours-of-service laws that constitutes a federal regulation violation and is good evidence of negligence. This also often shows a systemic problem with the trucking company – the driver and his company are driving tired and dangerous.

### **Regulations on Trucks and Trucking Companies**

The FMCSA has passed regulations related to securing cargo and heavy loads to make the cargo more secure and reduce the chances of it becoming loose or falling off the truck. These regulations include provisions for tying down cargo and using securing devices. In addition, all trucks must display certain markings on the vehicle, including USDOT numbers and Hazmat markings, among others.

The FMCSA has also passed regulations that govern trucking companies and hazardous material carriers. These regulations include complying with USDOT safety rules by trucking companies, unfit carrier rules, hours of service logbook rules for companies, hazardous material rules, State Hazmat permission and registration procedures, and others.

As previously mentioned in Chapter 2, Burger Law can help you recover compensation not just from the truck driver, but from the trucking company as well. Burger Law always conducts a detailed investigation into the policies and procedures of the trucking company to make sure no negligent action goes undiscovered. If the trucking company failed to comply with the safety rules mentioned above and that failure

contributed to your injuries, Burger Law will expose the failure and use it against the trucking company in your case.

### **Electronic Code of Federal Trucking Regulations**

The bulk of federal regulations concerning tractor trailers can be accessed through the following index:

300-302		[RESERVED]
<a href="#">303</a>	<a href="#">303.1 to 303.3</a>	CIVIL RIGHTS
<a href="#">325</a>	<a href="#">325.1 to 325.93</a>	COMPLIANCE WITH INTERSTATE MOTOR CARRIER NOISE EMISSION STANDARDS

---

#### **SUBCHAPTER B—FEDERAL MOTOR CARRIER SAFETY REGULATIONS**

<a href="#">350</a>	<a href="#">350.101 to 350.417</a>	MOTOR CARRIER SAFETY ASSISTANCE PROGRAM (MCSAP) AND HIGH PRIORITY PROGRAM
355		[RESERVED]
<a href="#">356</a>	<a href="#">356.1 to 356.5</a>	MOTOR CARRIER ROUTING REGULATIONS
<a href="#">360</a>	<a href="#">360.1 to 360.5T</a>	FEES FOR MOTOR CARRIER REGISTRATION AND INSURANCE
<a href="#">365</a>	<a href="#">365.101 to 365.511</a>	RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY
<a href="#">366</a>	<a href="#">366.1 to 366.6T</a>	DESIGNATION OF PROCESS AGENT
<a href="#">367</a>	<a href="#">367.20 to 367.60</a>	STANDARDS FOR REGISTRATION WITH STATES

<a href="#"><u>368</u></a>	<a href="#"><u>368.1 to 368.8T</u></a>	APPLICATION FOR A CERTIFICATE OF REGISTRATION TO OPERATE IN MUNICIPALITIES IN THE UNITED STATES ON THE UNITED STATES-MEXICO INTERNATIONAL BORDER OR WITHIN THE COMMERCIAL ZONES OF SUCH MUNICIPALITIES.
<a href="#"><u>369</u></a>	<a href="#"><u>369.1 to 369.10</u></a>	REPORTS OF MOTOR CARRIERS
<a href="#"><u>370</u></a>	<a href="#"><u>370.1 to 370.11</u></a>	PRINCIPLES AND PRACTICES FOR THE INVESTIGATION AND VOLUNTARY DISPOSITION OF LOSS AND DAMAGE CLAIMS AND PROCESSING SALVAGE
<a href="#"><u>371</u></a>	<a href="#"><u>371.1 to 371.121</u></a>	BROKERS OF PROPERTY
<a href="#"><u>372</u></a>	<a href="#"><u>372.101 to 372.303</u></a>	EXEMPTIONS, COMMERCIAL ZONES, AND TERMINAL AREAS
<a href="#"><u>373</u></a>	<a href="#"><u>373.100 to 373.201</u></a>	RECEIPTS AND BILLS
<a href="#"><u>374</u></a>	<a href="#"><u>374.1 to 374.505</u></a>	PASSENGER CARRIER REGULATIONS
<a href="#"><u>375</u></a>	<a href="#"><u>375.101 to 375.901</u></a>	TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE COMMERCE; CONSUMER PROTECTION REGULATIONS
<a href="#"><u>376</u></a>	<a href="#"><u>376.1 to 376.42</u></a>	LEASE AND INTERCHANGE OF VEHICLES
<a href="#"><u>377</u></a>	<a href="#"><u>377.101 to 377.217</u></a>	PAYMENT OF TRANSPORTATION CHARGES
<a href="#"><u>378</u></a>	<a href="#"><u>378.1 to 378.9</u></a>	PROCEDURES GOVERNING THE PROCESSING, INVESTIGATION, AND DISPOSITION OF OVERCHARGE, DUPLICATE PAYMENT, OR OVERCOLLECTION CLAIMS

<a href="#"><u>379</u></a>	<a href="#"><u>379.1 to 379.13</u></a>	PRESERVATION OF RECORDS
<a href="#"><u>380</u></a>	<a href="#"><u>380.101 to 380.725</u></a>	SPECIAL TRAINING REQUIREMENTS
<a href="#"><u>381</u></a>	<a href="#"><u>381.100 to 381.600</u></a>	WAIVERS, EXEMPTIONS, AND PILOT PROGRAMS
<a href="#"><u>382</u></a>	<a href="#"><u>382.101 to 382.727</u></a>	CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING
<a href="#"><u>383</u></a>	<a href="#"><u>383.1 to 383.155</u></a>	COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES
<a href="#"><u>384</u></a>	<a href="#"><u>384.101 to 384.409</u></a>	STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM
<a href="#"><u>385</u></a>	<a href="#"><u>385.1 to 385.1019</u></a>	SAFETY FITNESS PROCEDURES
<a href="#"><u>386</u></a>	<a href="#"><u>386.1 to 386.84</u></a>	RULES OF PRACTICE FOR FMCSA PROCEEDINGS
<a href="#"><u>387</u></a>	<a href="#"><u>387.1 to 387.419T</u></a>	MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS
388		[RESERVED]
<a href="#"><u>389</u></a>	<a href="#"><u>389.1 to 389.39</u></a>	RULEMAKING PROCEDURES—FEDERAL MOTOR CARRIER SAFETY REGULATIONS
<a href="#"><u>390</u></a>	<a href="#"><u>390.1 to 390.403</u></a>	FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL
<a href="#"><u>391</u></a>	<a href="#"><u>391.1 to 391.71</u></a>	QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS
<a href="#"><u>392</u></a>	<a href="#"><u>392.1 to 392.82</u></a>	DRIVING OF COMMERCIAL MOTOR VEHICLES

<a href="#"><u>393</u></a>	<a href="#"><u>393.1 to 393.209</u></a>	PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION
394		[RESERVED]
<a href="#"><u>395</u></a>	<a href="#"><u>395.1 to 395.38</u></a>	HOURS OF SERVICE OF DRIVERS
<a href="#"><u>396</u></a>	<a href="#"><u>396.1 to 396.25</u></a>	INSPECTION, REPAIR, AND MAINTENANCE
<a href="#"><u>397</u></a>	<a href="#"><u>397.1 to 397.225</u></a>	TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES
<a href="#"><u>398</u></a>	<a href="#"><u>398.1 to 398.8</u></a>	TRANSPORTATION OF MIGRANT WORKERS
<a href="#"><u>399</u></a>	<a href="#"><u>399.201 to 399.211</u></a>	EMPLOYEE SAFETY AND HEALTH STANDARDS

## **CHAPTER 6:**

### **COMMERCIAL DRIVER LICENSE REQUIREMENTS AND SPECIAL RULES THAT APPLY TO TRUCK DRIVERS**



The FMCSA sets the national standards with which truck drivers must comply. The federal agency partners with state and local governments, who issue their own commercial driver licenses (CDL). In order to obtain a CDL, a truck driver must be familiar with the trucking rules set out in its state's commercial driver guide. Missouri, Illinois and all states publish an annual Commercial Driver License Manual, which contains requirements for truck drivers to obtain CDLs and the rules of the road that truck drivers must follow. This chapter will touch on some of the important provisions of the Missouri Commercial Driver

License Manual, including commercial vehicle classifications, CDL requirements, and specific rules truckers must follow. To see the original CDL in Missouri, go to: [https://dor.mo.gov/forms/Commercial\\_Driver\\_License.pdf](https://dor.mo.gov/forms/Commercial_Driver_License.pdf) and to see it in Illinois, go to <https://driving-tests.org/illinois/il-cdl-handbook/>. I often use this manual in my truck crash cases to point out instances of truck driver negligence where they violated a rule of the road or did not meet certain CDL requirements.

### **Truck Descriptions**

The Missouri Commercial Guide classifies commercial vehicles into three categories: Class A, Class B, and Class C. For this reason, a commercial truck driver must have the proper license for the truck they are driving.

A commercial vehicle falls under Class A if “any combination of vehicles with a Gross Combination Weight Rating of 26,001 or more pounds provided the Gross Vehicle Weight Rating of the vehicle(s) being towed is more than 10,000 pounds. (Holders of a Class A license may also, with any appropriate endorsements, operate all vehicles within Class B and C.) This includes tractor-trailers, truck and trailer combinations, tractor-trailer buses, tankers, livestock carriers, and flatbeds.

A Vehicle falls under Class B if “any single vehicle with a Gross Vehicle Weight Rating of 26,001 or more pounds or any such vehicle towing a vehicle, not over 10,000 pounds Gross Vehicle Weight Rating. (Holders of a Class B license may also, with any appropriate endorsements, operate all vehicles within Class C.)” This includes straight trucks, large buses, segmented buses, box trucks, and dump trucks with small trailers.

All other commercial vehicles fall under Class C, “any single vehicle less than 26,001 pounds GVWR or any such vehicle towing a vehicle, not more than 10,000 pounds GVWR. This group applies only to vehicles that are placarded for hazardous materials or are

designed to transport 16 or more persons, including the operator. A holder of Class A, B, or C license may drive all vehicles which may be driven by a holder of a Class E or Class F license. Vehicles requiring a Class C CDL include small HAZMAT vehicles, passenger vans, and small trucks towing a trailer.

The manual describes it like this:

## MISSOURI CLASSIFICATION SYSTEM

(Note: Certain types of vehicles such as tankers, passenger, school buses, vehicles hauling hazardous materials, and double/triple trailers, will require an endorsement. Please consult text for particulars.)

---

Class	*Description
-------	--------------

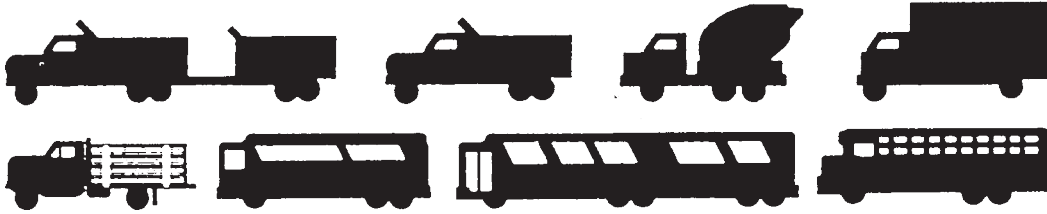
<b>A</b>	Any combination of vehicles with a Gross Combination Weight Rating (GCWR) of 26,001 or more pounds provided the Gross Vehicle Weight Rating (GVWR) of the vehicle(s) being towed is in excess of 10,000 pounds. (Holders of a Class A license may also, with any appropriate endorsements, operate all vehicles within Class B and C.)
----------	--

Examples include but are not limited to:



<b>B</b>	Any single vehicle with a GVWR of 26,001 or more pounds or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR. (Holders of a Class B license may also, with any appropriate endorsements, operate all vehicles within Class C.)
----------	--

Examples include but are not limited to:



**C**

Any single vehicle less than 26,001 pounds GVWR or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR. This group applies only to vehicles which are placarded for hazardous materials or are designed to transport 16 or more persons, including the operator. A holder of a Class A, B or C license may drive all vehicles which may be driven by a holder of a Class E or Class F license.

Examples include but are not limited to:



\*The representative vehicle for the skills test must meet the written description for that group. The examples represent, but do not fully cover, the types of vehicles falling within each group.

### **Drivers Who Must Obtain a Missouri Commercial Driver's License**

A person also is required to have a license if they are driving a single vehicle with a gross vehicle towing another not over 10,000 pounds.

A commercial license is also required when driving a vehicle designed to transport 16 or more persons, including the driver regardless of size.

Lastly, any person who drives a vehicle required by federal regulations to be placarded while transporting hazardous materials is required to have a commercial license in Missouri.

### **Test Required of Truck Drivers To Obtain a Commercial Driver's License**

Commercial truck drivers are required to pass certain tests to obtain a Commercial license. First, they are required to pass a knowledge test which requires an individual to

take a general skill written test and could be required to take additional tests involving factors such as air brakes, tanks, and hazardous materials, depending on the type of truck he or she plans to drive (listed in 49 CFR 383.111(a) and (b)).

They are also required to pass a skills test which consists of passing a vehicle inspection examination to show that the truck driver knows whether his or her commercial vehicle is safe to drive, and a basic control test to determine whether the trucker can control the vehicle (listed in 49 CFR 383.113 through 49 CFR 383.123).

The third test a driver is required to pass is an on-road test which requires the individual to drive his or her commercial truck or bus safely in a variety of on-road situations. Some of the tests administered during the driving course include making left and right turns, driving near railroad crossings, navigating curves, performing U-turns, and traveling on the highway.

The final test a driver must pass to become licensed is a medical test that requires a potential operator to receive certification from an examining doctor indicating they are medically fit to drive a bus or truck. These tests include hearing, vision, blood pressure, urinalysis, physical impairments, skill performance evaluation, implied consent to an alcohol test, and prescription drugs test.

### **Truck Drivers Are Required to Demonstrate Basic Control of Their Vehicle**

Truck drivers are required to drive the vehicle they are operating safely. They must always be able to control their truck speed and direction. Safe operation of a commercial vehicle requires skills in:

- Accelerating.
- Steering.
- Stopping.
- Backing safely

For a truck driver to get a commercial license, he or she must be proficient in each of the above-mentioned skills and must pass tests assessing those skills. If a driver does not possess the required skills and is driving a commercial vehicle, they can put many lives in danger. When a company puts a driver behind a commercial vehicle without having the skills and an accident occurs, the victim of the accident or their surviving family members can sue the truck driver and the trucking company for damages.

### **What Are the Rules of The Road for Truck Drivers?**

Commercial vehicle operators are required to obey standard driving laws and federal and state truck driving regulations, including:

- Driver Logs – truck drivers are required to keep logs during every trip. Regulations state that CDL drivers can only drive for 11 hours per day, must take a 30-minute break after driving for 8 hours, and drivers cannot operate a truck if they have worked 70 hours in an 8-day schedule.
- Maintenance Logs – trucks need to be inspected at all points, before and after each trip. This includes tire pressure and condition, fuel levels, liquid levels, air brakes, breaks, and lights.
- Bad Weather Safety – during inclement weather, truck drivers must reduce speed by 1/3rd of the regular speed limit – commercial trucks take longer than traditional vehicles to come to a complete stop.
- Lookout for Dangers – truck drivers are always required to keep a 360-degree view of the road, watch out for other drivers, and anticipate potential collisions.
- Truck driver should not drive at an Excessive speed which is 15 mph or more above the posted speed limit.
- Truck drivers should reduce speed to avoid an accident.

- Truck Drivers must adjust their speed according to road/weather conditions.
- Truck Driver must not exceed the speed limit in a school zone.
- CDL holders shall not operate a CMV or non-CMV in a manner that exhibits a willful, wanton or reckless disregard of persons or property.
- Truck drivers should not pass a vehicle stopped for a pedestrian in a crosswalk.
- Truck drivers shall not drive on a sidewalk.
- Truck drivers shall not pass a school bus receiving or discharging passengers or displaying a warning not to pass.
- Truck drivers must have a valid CDL when operating a CMV with proper classification.
- Truck drivers must not follow a vehicle too closely and truck drivers must leave sufficient distance for being overtaken by another vehicle.
- Truck drivers must not make improper or erratic traffic lane changes.
- They must not pass on a hill or curve when prohibited, pass on the wrong side of the road, pass on the shoulder, left or right, drive the wrong way on a one-way street or highway, drive on the left side of the roadway, or pass in a school zone.
- Truck drivers must not text or use a hand-held cell-phone while driving.
- Truck drivers must also control their speed depending on driving conditions such as traction, curves, visibility, traffic, and hills.
- Truck drivers must be familiar with each type of distance and that **Perception Distance + Reaction Distance + Braking Distance = Total Stopping Distance.**

- Truck drivers are required to give space and rule says you need at least one second for each 10 feet of vehicle length at speeds below 40 mph. At greater speeds, you must add one second for safety.
- Truck drivers should also stay to the right as much as they can and keep their vehicle centered in the lane, they are in.
- All CMV drivers must wear their seatbelts.
- Drivers behind Truck Drivers must be warned when they put their brakes on.
- All trucks, truck tractors, and buses must be equipped with emergency brakes and parking brakes. Companies are required these brakes are fully functional all times.
- A cargo tank should never be loaded full of liquids because liquids expand as they warm and must leave room for the expanding liquid.
- 49 CFR 383.5 requires a Commercial Driver's License with a Hazardous Materials endorsement before one can drive any size of vehicle to transport hazardous material.
- All drivers who drive hazardous material must be trained in the security risks of hazardous materials transportation and this training must include how to recognize and respond to possible security threats.
- Employers must provide drivers with hazardous material training.
- All hazardous materials packages must be secured during transportation.
- A truck driver should never transport damaged packages of explosives.
- The identification number of hazardous materials in portable tanks and cargo tanks and other bulk packaging must be displayed.

- Truck drivers must never smoke within 25 feet of a cargo tank that contains flammable liquids, explosives, flammable solids, spontaneously combustibles, or gases.
- Truck drivers who are driving a vehicle that is placarded must stop 15 to 50 feet before the nearest rail and only proceed when they are sure no train is coming and the they can clear the tracks without stopping.

### **Speed**

- The most important consideration for truck drivers is to select a speed that is not too fast for the:
  - Total weight of the vehicle and cargo
  - Length of the grade
  - Road conditions
  - Weather
  -
- Truck drivers shall never exceed the “Maximum Safe Speed,” that is shown.

### **Accident Procedures**

- Truck drivers who are in an accident and not seriously injured drivers are required to prevent further damage or injury. Steps to be taken at any accident:
  - Protect the area.
  - Notify authorities
  - Care for the injured

### **Backing-Out Safely Rules**

- Truck drivers are required to put the vehicle in the best position to back out.
- Truck drivers are also required to look at their line of travel before they began and should get out and walk around their vehicle to check clearance to the sides and overheard, in and near the path their vehicle will take.

- Truck driver should use both mirrors and check them frequently and should get out of the vehicle and check their surroundings if they are unsure.
- Truck driver should always back as slowly as possible and use the lowest reverse gear in order to easily correct steering errors and stop quickly if necessary.
- Truck drivers should always back to the driver's side to see better because backing toward the right side is very dangerous and can impair site.
- Truck drivers should also use a helper when backing out in order to compensate for blind spots.

### **Seeing Requirements**

- Truck drivers are required to be a safe driver and part of that is needing to know what is going on around their vehicle. Because stopping or changing lanes can take a lot of distance, knowing what the traffic is doing on all sides is important. Drivers need to look well ahead to make sure they have room to make these moves safely.
- How Far Ahead to Look. Most good drivers look at least 12 to 15 seconds ahead. That means looking ahead the distance drivers will travel in 12 to 15 seconds. At lower speeds, it is about one block. At highway speeds, it is about one-quarter of a mile. If drivers are not looking that far ahead, they may have to stop quickly or make quick lane changes. Looking 12 to 15 seconds ahead does not mean not paying attention to things that are closer. Good drivers shift their attention back and forth, near and far.
- Drivers should also look for vehicles coming onto the highway, and turning into their lane. Drivers should watch for brakes from slowing vehicles.

- Truck drivers should check their mirrors regularly and more often in special situations such as lane changes, turns, merges, and tight maneuvers.

## **Communicating**

- Truck drivers should communicate all of their intentions. They should signal what they intend to do.

## **Turns**

There are three rules for using turn signals:

1. Drivers should signal early and well before they turn.
  2. Drivers should signal continuously and both hands should be on the wheel to turn safely. Signal shall not be canceled until the turn has been completed.
  3. Lastly, drivers shall cancel their signal once the task has been completed.
- Truck drivers should also turn on their signal before changing lanes.
  - Truck drivers should only use their horn when needed because use of horn can startle other and could be dangerous when used unnecessarily.

Truck accidents are often severe and can result in debilitating, and sometimes fatal, injuries. If a CDL driver is careless behind the wheel of a truck and crashes into another vehicle or object, the victim of the accident or their surviving family members can sue the truck driver and the trucking company for damages.

## **Tire Requirements**

- CMV must have at least 4/32-inch tread depth in every major groove on the front tires and at least 2/32 inch on other tires.
- Truck drivers should make sure to get enough sleep and are recommended to get at least seven or eight hours of sleep every 24 hours.

## **Hazardous Materials**

- Truck drivers must follow the many rules about transporting hazardous materials.

The intent of the rules is to:

- Contain the product.
  - Communicate the risk.
  - Ensure safe drivers and equipment
- 
- To obtain a Hazardous Material endorsement on a CDL, a driver must pass a written test about transporting hazardous materials. To pass the test, a driver must know how to:
    - Identify what are hazardous materials.
    - Safely load shipments.
    - Properly placard their vehicle in accordance with the rules.
    - Safely transport shipments.
    - Non-compliance with the rules can result in fines and jail time

## **Hazardous Crashes/Incidents**

As a professional driver, their job at the scene of a crash or an incident is to:

- Keep people away from the scene.
- Limit the spread of material, only if you can safely do so.
- Communicate the danger of the hazardous materials to emergency response personnel.
- Provide emergency responders with the shipping papers and emergency response information
- 

## **Transporting Cargo**

Truck drivers whether not they load and secure cargo themselves they are responsible for:

- Inspecting their cargo
- Recognizing overloads and poorly balanced weight
- Knowing their cargo is properly secured and does not obscure their view ahead or to the sides.
- Knowing their cargo does not restrict access to emergency equipment
-

## **Required Notification**

A truck driver or their employer must phone the National Response Center when any of the following occur as a direct result of a hazardous materials incident:

- A person is killed.
- An injured person requires hospitalization.
- Estimated property damage exceeds \$50,000.
- The general public is evacuated for more than one hour.
- One or more major transportation arteries or facilities are closed for one hour or more.
- Fire, breakage, spillage or suspected radioactive contamination occurs.
- Fire, breakage, spillage or suspected contamination occur involving shipment of etiologic agents (bacteria or toxins).
- A situation exists of such a nature (e.g., continuing danger to life exists at the scene of an incident) that, in the judgment of the carrier, should be reported.

## **Commercial Driver's License Disqualifications**

Disqualification for Major Offenses Include:

- Being under the influence of alcohol as prescribed by State law.
- Being under the influence of a controlled substance.
- Having an alcohol concentration of 0.04 or greater while operating a CMV. Refusing to take an alcohol test as required by a State or jurisdiction under its implied consent laws or regulations.
- Leaving the scene of an accident.
- Using the vehicle to commit a felony, other than felony involving manufacturing, distributing, or dispensing a controlled substance.

## **CDL Driver Disqualification for Serious Traffic Violations Include:**

- Speeding excessively, involving any speed of 15 mph or more above the regulated or posted speed limit.

- Driving recklessly, as defined by State or local law or regulation.
- Making improper or erratic traffic lane changes.
- Following the vehicle ahead too closely.
- Violating State or local law relating to motor vehicle traffic control.

**CDL Driver Disqualification for Railroad-Highway Grade Crossing Offenses Include:**

- The driver is not required to always stop but fails to slow down and check that tracks are clear of an approaching train.
- The driver is not required to always stop but fails to stop before reaching the crossing if the tracks are not clear.
- The driver is always required to stop but fails to stop before driving onto the crossing.
- The driver fails to have sufficient space to drive completely through the crossing without stopping.
- The driver fails to obey a traffic control device or the directions of an enforcement official at the crossing.
- The driver fails to negotiate a crossing because of insufficient undercarriage clearance.

**What Rules and Regulations Do Truck Drivers Need To Follow?**

Commercial vehicle operators are required to obey standard driving laws and federal and state truck driving regulations, including:

- **Driver Logs** – truck drivers are required to keep logs during every trip.

Regulations state that CDL drivers can only drive for 11 hours per day, must take a

30-minute break after driving for 8 hours, and drivers cannot operate a truck if they have worked 70 hours in an 8-day schedule.

- **Maintenance Logs** – trucks need to be inspected at all points, before and after each trip. This includes tire pressure and condition, fuel levels, liquid levels, air brakes, breaks, and lights.
- **Bad Weather Safety** – during inclement weather, truck drivers must reduce speed by 1/3rd of the regular speed limit – commercial trucks take longer than traditional vehicles to come to a complete stop.

- **Lookout for Dangers** – truck drivers are always required to keep a 360- degree view of the road, watch out for other drivers, and anticipate potential collisions. Truck accidents are often severe and can result in debilitating, and sometimes fatal, injuries. If a CDL driver is careless behind the wheel of a truck and crashes into another vehicle or object, the victim of the accident or their surviving family members can sue the truck driver and the trucking company for damages.

**Did you know that these regulations all come from NHTSA's analysis of Truck crashes?** Here's an example:



U.S. Department  
of Transportation  
National Highway  
Traffic Safety  
Administration  
DOT HS 809 349



June 1983

Technical Report

## An Analysis of Fatal Large Truck Crashes



Published by:  
**NCSA**  
National Center for Statistics and Analysis  
Advanced Research and Analysis

This document contains certain parts that are exempt from automatic declassification review. (Exempt, 25 U.S.C. 552)

**CHAPTER 7:**  
**BIG COMPANY REQUIREMENTS FOR TRUCK DRIVERS**



Federal and state laws and regulations are not the only rules that apply to truck drivers. Big trucking companies often have extensive requirements for their truck drivers related to operations and safety. This section will discuss some of the common requirements big companies expect their truck drivers to comply with. There are many good and responsible trucking companies out there. But the bad companies contribute to serious injury and death from road incidents. We have represented many good and responsible truck drivers in crashes and are proud to serve truck drivers as lawyers. But

when a company or driver – auto or truck – breaks the rules of the road and needlessly injures or kills someone, they should be responsible for that harm and damages.

### **Trailers**

Big companies require their truck drivers to do pre- and post-trip inspections of each trailer the driver picks up and drops. This includes ensuring the trailer is clean and ready to load when brought to a customer's facility. The interior of the trailer, including the floor, walls, and ceiling should be inspected for nails, holes, and other things that could potentially damage the customer's product or packaging. Trailers should be swept out and free of trash. Trailer doors must be inspected to make sure they fit tightly and close snugly. Additionally, a truck driver should inspect the roof of the trailer to ensure it is in good shape and free of leaks.

### **Dock Rules**

Truck Drivers should be familiar with the different dock rules particular to each shipper and consignee. More and more companies are insisting on safety, and therefore have rules that specify where drivers must wait, whether drivers can smoke or not, etc. Taking the time to learn the customers' dock rules will go a long way in a truck driver maintaining a safe work environment and good relations with companies.

### **Securing Cargo**

Truck drivers should ensure that their truck and cargo are safe when left unattended for any period of time. They should choose a safe and secure location to park their truck to prevent theft. Leaving units in an unsecure, unprotected area can get truck drivers fired. A truck driver should always make sure their cargo is secure in order to protect his or her job.

### **High Value Loads**

When assigned to a high value load, truck drivers should take proper measures to ensure successful transportation. They should not discuss their load with others. Additionally, truckers should check they have enough hours and fuel to drive the required distance from the shipper before stopping. They should attempt to have at least one person remain with the truck at all times. Additionally, they should keep the truck and trailer hooked at all times and leave the seal intact and the trailer pad locked at all times. Lastly, truckers should complete a pre-trip inspection every time they stop under load to make sure the load is secure.

### **Licensing**

Big companies require their truck drivers to verify that their tractor and trailer permits are current. If a truck driver has an expired permit, they should contact the Licensing Department of their employer as soon as possible. This will allow the truck driver to avoid fines for expired or missing permits. Truck drivers should check that permits are current before every trip plan.

### **Safety Requirements**

Truck drivers should make sure to use any safety equipment required by shippers and consignees. They should not use satellites while driving. Safety belts need to be worn at all times by truck drivers or passengers, and bunk restraints should be applied at the appropriate times. Movements between the sleeper and the cab of a truck while the vehicle is in motion put a truck driver at risk of injury and should be avoided if possible. Truckers should avoid making U-turns on public roadways, as this often violates company policy and can result in termination. Additionally, truck drivers should avoid parking on entrance and exit ramps and should reduce their speed to 10 miles below the posted speed limit

when accessing exit ramps. They should not exceed 5 MPH while driving in parking lots, truck stops, terminal yards, and shipper and consignee locations. Lastly, truck drivers should never use cell phones or hand free devices while operating trucks.

### **CDL Policy**

All big companies require their truck drivers to have a Class A Commercial Driver's License (CDL) with HAZMAT endorsement. The CDL must be from the state in which the trucker resides. An individual's state of residency is the state in which he or she filed W-4 tax documents. If a truck driver moves from one state to another, a new CDL must be obtained within 30 days per Federal Motor Carrier Regulations.

### **Logs**

Logs should be kept in accordance with part 395 of the Federal Motor Carrier Safety Regulations. In addition, most big companies have more detailed log requirements. For example, many companies require truck drivers to prepare a log for each and every day of the month unless off duty, and logs must be kept current to the last change of duty status. Many big companies expect truck drivers to keep logs with them on the truck for 6 months. Most companies require truck drivers to conduct pre-trip and post-trip inspections every day, and each inspection must be properly documented. This includes reporting any defects or irregularities with their unit.

### **Defensive Driving Courses**

Many big companies require truck drivers to attend Defensive Driving Courses for situations including being involved in accidents, being put out of service, receiving a citation, speeding, or having a poor cumulative safety record.

**CHAPTER 8:**  
**HOW TO HIRE A LAWYER FOR YOUR TRUCK CRASH CASE: QUESTIONS**  
**YOU SHOULD ASK**



Choosing a lawyer is tough – how do you know who to get? You want the best you can get, to be treated nicely and fairly, and to get the full value of your damages as quickly as possible. Here are some questions you should ask a lawyer before hiring them:

- Are you going to handle my case personally?
- I know you say, ‘No Fee if No Recovery’ and I get a free consultation, but if you lose my case are you going to want me to pay at least your expenses?
- Do I really have no obligation whatsoever if we do not win my case?

- Do you go to court, take depositions, and fight these cases or do you just sign these up and let your associates do the work?
- Do you file lawsuits and try cases, or are we just going to collect a bunch of documents, send them to the claims adjustor and settle this case cheaply?
- Have you actually litigated and tried these kinds of cases?
- Do you continue to train and keep up with your trial skills?
- Do you have a reputation in the legal community and with claim adjustors and defense lawyers that you will fight to the very end for a case to ensure that you get the full value of the settlement of the claim, rather than a reduced value?
- Do you have a packet of information (published articles, books, pamphlets, etc.) to educate me about your firm so that I know that you will be able to strongly represent my interests?
- Are you going to look to try to get 50, 60, or 70% of my damages, or are you going to try your hardest to get 100% of my damages from the defendant?
- Do you have experience in winning difficult liability cases, pursuing claims where injuries are severe, finding additional insurance where no one else thought there was any, thinking outside the box, investigating claims and being aggressive to ensure that we get a fair recovery?
- How long have you been practicing in this field of law?
- Have you ever handled a case similar to mine before?
- What would previous clients say about you?

**Here are several additional questions to ask:**

- What are the possible outcomes of my case?
- Will you be able to assist me in finding good medical care?
- Will you be able to fight my liens for my insurance company or others who want to take money from my case?
- Do you charge additional money for fighting liens or if I have to get a loan or any other matter other than the percentage that you promised me?
- Are you willing to take my case for a lower percentage than what you have quoted?
- Are expenses included in your fees?
- Will you let me know what is going on with my case in a timely manner?
- Will you answer my phone calls and communicate with me?
- What style approach will you take--aggressive and zealous?
- Although I certainly want to settle my case, will you make sure I get all the money I can?
- Who else in your office will be working on my case?
- Can I have your personal cell phone number and email address so I can communicate with you about my case?
- What qualifications do you have to handle my case?
- Is my case so small because I do not have much medical that I would put more money in my pocket if I call the insurance company directly?
- Will you give me some guidance on how to settle with the insurance company without having to pay you?
- Can you really add value to my case even if it is a smaller case?

- Is this a serious enough injury where I should get a lawyer?
- Do you as a lawyer have the right experience and resources?
- How is your firm's track record?
- What kind of reputation do you have?
- Do you have any certifications or peer awards?
- If I terminate my representation of you before the matter is resolved, do I have to pay you?
- Will you be responsible for my case or will I be assigned to another lawyer? Or will you work as a team with other lawyers?
- Who is my primary contact?
- What is the best way to communicate with you?
- How are you going to tell me about what is going on with my case?
- Why should I hire you?
- How strong is my case?
- What are my case weaknesses?
- How busy is your case load will you have enough time for mine?

### **Questions to Ask Yourself:**

- Do I feel comfortable with this lawyer?
- Is this lawyer trying to hard sell me or is it obvious that they are a robust business and having them as a teammate to fight your claim would be beneficial?
- Do I have a claim?
- Does this lawyer present me with the best opportunity to win my case?
- Does this lawyer just want my money or are they really trying to help me?

- Does this attorney have the proper experience to pursue my claim?

Remember that lawyers are just like any other business and should not be shy about discussing with the client their experience, results, how robust their team is, and any other question a potential client asks. At Burger Law, we put our results on our website, describe our work and how much we are in trial, depositions and in court, work with each other to communicate well with each other and our clients, keep honing our legal and trial talent through study and teaching. Our website at [Burgerlaw.com](https://burgerlaw.com) has videos and material of the many legal education classes I put on to teach other lawyers what I have learned (<https://burgerlaw.com/lawyer-to-lawyer/>), links to our you tube channel with hundreds of videos ([https://www.youtube.com/channel/UCT5U\\_DEIRil-ZOH5bhxvuhw?view\\_as=subscriber](https://www.youtube.com/channel/UCT5U_DEIRil-ZOH5bhxvuhw?view_as=subscriber)), the podcast I created called Lawyervlawyer (<https://burgerlaw.com/lawyer-v-lawyer-podcast/>), and many other resources. We are proud to match our dedication and success rate to any other lawyers.

**CHAPTER 9:**  
**WHAT MAKES BURGER LAW SO UNIQUE AND SUCCESSFUL**  
**IN TRUCK CRASH CLAIMS?**



With over 28 years of experience as a trial lawyer and 20+ of those years having run my small-to-medium-sized firm exclusively dedicated to helping injury victims and their families, I have had the opportunity to work with some wonderful clients and have delivered life-changing stories on truck crash cases. This chapter will focus on some of my clients' stories of the truck crashes they have experienced and how we have obtained recoveries for them.

**\$5 Million Tractor Trailer Death Settlement**

Burger Law represented the family of a man killed in a wreck with a tractor-trailer in a wrongful death claim. In the early morning our client was leaving a casino and went

through an intersection on a green light. A tractor-trailer proceeded southbound on South Broadway in St. Louis, drove through a red light, and crashed into our client's truck.

The impact was disastrous, causing both vehicles to travel in opposite directions. Sadly, both drivers were pronounced dead instantly. The tractor-trailer took out some light poles and its cargo was spilled all over the road. The crash also caused extreme property damage to the neighborhood and destroyed both vehicles completely.

We filed suit and proceeded with litigation on behalf of the family and conducted a quick and extensive investigation to identify some amazing liability evidence and to secure the evidence at the scene. We had an investigator at the location of the crash quickly and were able to show through the timing of the traffic lights that the tractor-trailer went through the red light. We also interviewed key witnesses.

Using skid marks, we were able to show that the tractor-trailer was over the center line and was on the wrong side of the road at the time of the impact. Witness accounts indicated the tractor-trailer was traveling at an excessive speed.

We were able to keep the venue in the City of St. Louis, where it was originally filed. The Defendant sought to remove the case to Federal Court. However, we opened an Estate for the deceased truck driver. Did you know that you can open an estate as a creditor? We did so. Residency is different between an individual and an Estate. A deceased individual does not have a residence, but his Estate is a residence of the State of Missouri. This destroyed diversity jurisdiction and enabled us to keep the case in State Court. We also conducted extensive litigation and matters in 4 probate filings (as part of our fee). This involved probate filing to ensure that our client's son was his heir (he had not been declared his son prior to his death), a different suit to open the probate estate for his

assets, and to establish conservatorship and guardianship on behalf of the child by his grandparents.

We put together strong exhibits for our mediation to prove to the trucking company and its insurer their driver's gross negligence. We were aggressive in the mediation in this case and refused to settle. Later, when the defendant obtained additional authority from its Board of Directors, we settled the claim for \$5 million a couple of years ago.

We were able to put a very large amount of money in a trust fund and structured settlement for the young child of the deceased. We continue to maintain and work with the Court and the Conservatorship proceedings to make sure that money is secured for him. We were happy to get such a great result in the case. For more details, see the Missouri Lawyers Weekly article pictured below.





# MissouriLawyers

www.molawyersmedia.com WEEKLY

## Settlement ends suit over early morning fatal crash

*Tractor-trailer struck victim's SUV near casino*



Gary Burger

**BY ALAN SCHER ZAGIER**  
Special to Missouri Lawyers Media

The family of a 29-year-old Jefferson County man killed while driving home from the River City Casino after midnight settled a wrongful death claim against the other driver for \$5 million.

The settlement agreement keeps the names of both drivers as well as the defense attorney confidential, said plaintiff's attorney Gary Burger of Cantor & Burger in St. Louis. He described the case as follows:

The victim was leaving the south St. Louis casino in the early morning of June 15, 2013, when his SUV was hit by a tractor-trailer as he tried to turn left onto Broadway Avenue from River City

Casino Boulevard. The SUV driver — who had a green light — was hit by a fully-loaded tractor-trailer traveling south on Broadway, Burger said. The truck driver also died.

A lawsuit was initially filed in St. Louis Circuit Court but transferred to federal court since the two sides had complete diversity of citizenship.

Burger said the SUV driver was a construction worker and single father raising a 4-year-old son. The agreement included a structured settlement to benefit the child.

"He was a fantastic father and had raised his child by himself since [the boy] was 3 weeks old," Burger said.

The defense attorney confirmed the settlement details but declined further comment.

### \$5 Million Settlement

#### WRONGFUL DEATH

- **Venue:** U.S. District Court for the Eastern District of Missouri
- **Case Number/Date:** Confidential/Jan. 17, 2014
- **Judge:** John Ross
- **Plaintiff's expert:** Nathan Shigemura, New Berlin, Ill., (accident reconstruction)
- **Caption:** Confidential

■ **Plaintiff's attorney:** Gary Burger, Cantor & Burger, St. Louis

■ **Defendant's Attorney:** Confidential

## **Homeowners Insurance Recovery In \$2 Million Auto Accident Case**

On November 18<sup>th</sup> 2010, Concetta Wills was driving on Interstate 270 in St. Louis County when playground equipment fell from the back of a truck that was traveling ahead of her on Highway 270. Burger Law was able to collect \$2 million from several sources for Concetta. We got money for Concetta from both the automobile and home owner's insurance policies of four people involved in the 2010 crash that left her severely injured.

Concetta was terribly injured when she unsuccessfully swerved to avoid running into the playground equipment and instead hit the equipment, the median wall, and then two other cars collided into her.

I sought and collected the policy limits on automobile and homeowner's insurance policies from Darlene Strupp, the driver of the truck carrying the equipment. I also obtained a settlement from the homeowner's and auto policies of the truck's passenger, who was the driver's daughter and had tied down the equipment. I then recovered from the Auto Insurance policies for both of the cars that subsequently struck Concetta's car. Ultimately, Concetta collected \$1.96 million from the accident, including legal fees and expenses for her injuries which consisted of severe abdominal injuries and broken ankles.

Although this sounds like a lot of money, Concetta is permanently disabled and has to live with her injuries for the rest of her life. Concetta suffered severe abdominal injuries and broken ankles from the crash. I'm proud to have represented her, and I'm glad I was able to help her recover the money she requires for her medical care. Pictured below is the Missouri Lawyers Weekly article covering the details of my truck crash case with Concetta.

# MissouriLawyers

www.molawyersmedia.com

WEEKLY

## Injured woman settles highway crash lawsuit

*Attorney pursued homeowner's and auto policies*



Gary K. Burger Jr.

BY MELISSA MEINZER  
melissa.meinzer@molawyersmedia.com

A woman injured in a car accident has collected settlements totaling nearly \$2 million from several sources, thanks to what her attorney called "creative lawyering." The woman collected from both automobile and homeowner's insurance policies of four people involved in the 2010 crash that left her severely injured.

Concetta Wills was driving on Interstate 270 in St. Louis

County on Nov. 18, 2010, when playground equipment fell from a truck that was traveling ahead of her, according to the lawsuit. Wills, who was in a PT Cruiser, swerved in a failed attempt to avoid the equipment. She hit the median wall, and then two other cars collided with her car.

Her attorney, Gary Burger, sought and collected the policy limits on automobile and homeowner's insurance policies from Darlene Strupp, the driver of the truck carrying the equipment. He also obtained a settlement from the homeowner's and auto policies of the truck's passenger,

### \$2 million settlement

#### MOTOR VEHICLE COLLISION

■ **Breakdown:** \$1 million homeowner's insurance and \$250,000 auto insurance from Darlene Strupp; \$500,000 homeowner's insurance and \$100,000 auto insurance from Carrie Strupp; \$50,000 auto policy from Holtzmann; \$25,000 auto policy from Cooseman; \$35,000 in attorney's fees and expenses

■ **Venue:** St. Louis County Circuit Court

■ **Case Number/Date:** 11SL-CC00410/June 1, 2012

■ **Judge:** Michael T. Jamison

■ **Insurers:** State Farm for Darlene Strupp; Liberty Mutual for Carrie Strupp; Acuity for Becky Cooseman; Progressive for Ashley Holtzmann

■ **Caption:** Concetta Wills v. Darlene Strupp, Becky Cooseman, Ashley Holtzmann, Carrie Strupp and Liberty Mutual Insurance Co.

■ **Plaintiff's Attorney:** Gary K. Burger, Cantor & Burger, St. Louis

■ **Defendants' Attorneys:** Scott C. Harper, Brinker & Doyen, Clayton, for Darlene Strupp; Russell F. Watters, Brown & James, St. Louis, for Becky Cooseman; Daniel E. Wilke, Wilke & Wilke, St. Louis, for Ashley Holtzmann; Debbie Champion, Rynearson, Suess, Schnurbusch & Champion, St. Louis, for Carrie Strupp

who was the driver's daughter and had tied down the equipment. Auto insurance policies for both of the cars that subsequently struck Wills' car paid up, as well. Ultimately, Wills collected \$1.96 million from the accident, including legal fees and expenses, her lawyer said.

"This sounds like a lot of money, but she ain't hitting the lottery," said Burger, of Cantor & Burger in St. Louis. "I am proud to be able to get this great recovery for this severely injured woman."

Wills is permanently disabled, according to the suit. Burger said the woman is just beginning to walk again, with a walker. He said she went into debt to pay for her care.

Wills suffered severe ab-

dominal injuries and broken ankles, Burger said. The woman also already had lupus and other medical conditions that made healing from her crash injuries more difficult.

From Darlene Strupp, who was insured by State Farm, Burger said he collected \$1 million in homeowner's insurance and \$250,000 in auto insurance. Scott C. Harper, of Brinker & Doyen in Clayton, represented Darlene Strupp and declined to comment.

Liberty Mutual insured Carrie Strupp, who tied the equipment to the truck, and first offered \$100,000 from her auto insurance policy. Burger said he rejected that offer and demanded the \$500,000 policy maximum

from her homeowner's policy plus the initial \$100,000 offer, and the defendant ultimately agreed.

Insurers for the other two drivers, Becky Cooseman and Ashley Holtzmann, contributed their policy limits of \$25,000 and \$50,000, respectively.

Debbie S. Champion, of Rynearson, Suess, Schnurbusch & Champion in St. Louis, represented Carrie Strupp and said it was an unusual case. Her client faced a lawsuit for a car accident although she wasn't driving.

"Liberty Mutual decided to pay it," Champion said. "The plaintiff was in such bad shape I think they just decided it was a case that should be settled."

### **\$1 Million Settlement in A Truck Driver V. Truck Driver Case**

Burger Law represented the widow of a tractor-trailer driver who was killed in an accident with another tractor-trailer driver. The two drivers were travelling in opposite directions on Interstate 20 west of Dallas, Texas. The defendant truck-driver crossed the median into the westbound lane of Interstate 20 and was struck by our client. Our client had little to no time to react. The skid marks indicated that he moved a little to the left to try to avoid the trailer and smashed the front of his trailer into the back passenger side of the other driver's trailer.

We hired an expert and the defendant did as well. I travelled to Dallas to inspect the vehicles. The black box or ECM data from both trucks did not provide any information about the crash. However, we learned through discovery that the defendant truck driver drove at an excessive speed for the circumstances and on the wrong side of the road. He may have also been driving too close to vehicles in front of him which may have prompted him to turn to the left.

The defendant's attorney tested the brakes of our client's truck and found them in disrepair. They tried to put fault on our client for this. However, we were able to show repair reports indicating our client had his brakes repaired within a month before the crash in New Mexico.

We also made a strong claim against the defendant truck driver's employer. They negligently hired the defendant driver. We learned through discovery that the defendant driver was involved in a similar incident the year before and killed someone else. The employer must have known their driver was negligent in the previous wreck because they settled that claim for \$1.4 million four months before our client was killed in this case.

We were happy to get a great \$1 million settlement for the widow of our client. Another part of this story is the hard work we did in resolving all the liens in this case. We insisted that any recovery in the case would not be reduced by property damage claims to the tow tractor and trailers, loss of cargo and our client's workers compensation benefits. The extra work we do in reducing and eliminating liens does as much good for a family as the settlement. Below are a couple photos from this case.





### **\$600,000 Settlement in Tragic Tractor-Trailer Crash Case**

We represented our client who was seriously injured when a tractor-trailer driver negligently merged into her lane and struck her vehicle on I-70. Our client's car spun out of control following the collision and she had to be extracted from her vehicle by medical personnel.

This was a violent and dangerous impact at highway speeds, causing serious injuries to our client's neck and shoulder. She treated conservatively for years, but ultimately had a neck fusion 3.5 years after the accident and arthroscopic shoulder repair 4.5 years after the accident. We were still able to link these surgeries to her wreck.

We litigated the case and fought hard for our client. She did a great job in her deposition, describing how she was unable to work at her computer for several hours, reach or lift overhead, carry her daughter, or drive for more than a half hour without experiencing pain. Despite years of physical therapy and injections, her symptoms were

never fully resolved, which is why she ultimately received the surgeries. We wanted to make sure she got fairly compensated and were able to get a great settlement of \$600,000 for her.

### **\$305,000 Settlement in Southern Illinois Truck Accident Case**

Burger Law settled a truck accident case for a husband, wife and grandmother after they collided with a semi-truck in southern Illinois. They were travelling from a family dinner and proceeding northbound on Route 3 in Waterloo. As they approached the intersection, a truck was making a local delivery at night and made a left hand turn directly in front of them. Our client did not have time to stop his vehicle and skidded into the front of the tractor-trailer.

The truck driver did not get out of his vehicle, apologize, or even speak to our clients. Instead, he called his headquarters and within a half hour, had a lawyer and a claim agent at the scene taking statements and pictures. The trucking company's lawyer came to the scene and took photos of our clients being taken away in the ambulance.

Our clients suffered a variety of serious injuries in this accident. The husband and wife received treatment for soft tissue injuries while the grandmother broke a bone in her hand and suffered from reflex sympathetic dystrophy. Burger Law successfully settled all three cases after extensive litigation which included mediation. We were happy to get a total of \$305,000 in compensation for a broken bone in a hand and soft tissue injuries. Additionally, we recovered \$10,000 for each of the three clients in medical payment coverage from their own insurance company. Below is photo from the scene of this accident.

### **\$290,000 Settlement In A Tanker V. Tractor Trailer Crash**

In the afternoon of January 28, 2013, our client was doing his regular route as a tractor trailer driver. He has been driving tractor trailers for 30 plus years. As he was coming up to a curve in Gasconade County, Missouri, a tanker trailer truck came around the curve going at an excessive rate of speed. The tanker on the back of the truck literally turned over in the middle of the curve into our client's lane and came straight at him. Our client had no time to react and there was nothing he could do. His tractor trailer slammed right into the tanker and stopped.

This case made it to the front page of the local newspaper. Our client was taken via ambulance from the scene. A good lawyer and friend of Gary Burger did a great job for our client in his Workers Compensation claim. Aside from bruises and contusions, our client had a lingering injury to his knee. He got a great recovery in the Illinois Workers Compensation case and then asked me to assist in the civil case.

We filed suit and litigated the case. We took the deposition of the Defendant. We scored a lot of points with the Defendant truck driver who admitted to a pretty significant speeding and criminal history, and to using his phone at the time of the accident. However, he did deny going too fast at the time of the wreck. He was in a line with his boss of three tanker trucks going into the turn. He was very familiar with the turn. The only way the tipping of the load could have happened was if he took the curve too quickly, although he did not admit to that.

The main challenge in resolving this case was the fact that our client had prior knee injuries and a knee replacement surgery. Every doctor will tell you that knee replacement surgeries are typically not done for acute injuries like our client had, but to degenerative changes over time. Our client had a long work history of pretty heavy-duty labor and

significant degenerative changes to his knee. The risk in these types of cases is that the jury will think the knee replacement was because of the degenerative changes over time and not the acute accident in the instant case. However, doctors usually testify that the accident at issue contributed to cause the need for knee replacement, or was the straw that broke the camel's back. Balancing these challenges, we were able to get a great settlement of \$290,000 for our client.

### **\$225,000 Settlement In Truck Crash Case**

On April 24, 2017, our client was travelling southbound in the right lane on U.S. 67 when a truck driver attempted to change lanes. The truck driver steered into the right lane and struck our client's vehicle. Our client attempted to steer away, but his car became hooked onto the truck driver's vehicle and our client lost control. Both vehicles eventually came to a stop in the median of the highway.

Our client suffered serious injuries to his neck and upper back, resulting in a disc replacement surgery. He went to countless physical therapy visits, but he may never fully recover from his injuries.

Instead of admitting fault, the defendants denied the events that took place. Therefore, we had to aggressively fight this case and filed a lawsuit to fight for justice for our client. After three years of litigation and a mediation, the defendant and his insurance company decided to do the right thing and offered to settle the case. We were able to obtain a \$225,000 settlement for our client, just shy of the \$250,000 policy limit.

This case is a classic example of why it is very important to hire an attorney when you're seriously injured in a car accident as our client was. Without the assistance of our office, our client may not have been able to settle this case or get this great settlement, as the other driver tried to deny the events that took place. We also had to work through and

reduce liens for our client. We are proud to have represented our client in this case, and Burger Law is always willing to file suit and use the law to obtain the best results for our clients. Check out the photo from this case below.



### **From No Offer to A \$205,000 Settlement**

Our client was driving his vehicle southbound on a street in southern Illinois when another driver failed to stop at a stop sign and entered the intersection right in front of our client's car. The police report indicated our client had the right-of-way at the intersection. The client had back injuries and complained of back pain at the scene of the wreck, but chose to seek medical attention on his own.

Burger Law settled the client's claim with the liable truck driver for policy limits of \$25,000 with the consent of our client's insurance company. We then asserted a claim against our client's insurance company for med pay and underinsured coverage.

Before the crash our client had no neck or back problems or any treatment for those types of injuries. Two hours after the crash our client went to the hospital with complaints of neck pain, upper back pain, lower back pain, and left leg pain. He underwent CT scans of his cervical and lumbar spine, which revealed a "prominent bulging disk at L5-S1." He was discharged that same night, prescribed Percocet for his pain and told to follow up with a doctor for his complaints.

Our client went to an orthopedic surgeon, a physical therapist and a chiropractor. He had injections to try to help control the pain. Eventually he underwent a micro lumbar discectomy L5-S1 procedure. However, in his post-surgical follow up he still had pain in his left leg and neck. He stopped getting medical treatment for his injuries though and continued going to work and school. His doctor released him from all restrictions and told him to follow up if necessary. Our client's medical bills were around \$46,000.

The client's insurance company totally denied his claim initially. Since they refused to offer any money, we filed suit for an underinsured claim. We kept up the pressure throughout litigation and obtained the medical payment benefits from our client's

insurance policy. Illinois law enforces mandatory arbitration clauses in contracts, and every insurance policy contains a mandatory arbitration clause. So, we picked arbitrators and set the case for arbitration. We then did additional discovery and depositions in the case.

Shortly before arbitration, we settled our client's case for \$130,000 in new money. We effectively obtained a \$205,000 recovery for our client when his insurance company was unwilling to offer any money at the start of the case. Burger Law was happy to get this great recovery for our client after keeping up the pressure on his insurance company.

### **\$212,000 Truck Crash Settlement**

Our office was able to get a great settlement for our client Matthew, an over the road truck driver. Matt was driving out of state in Texas when this crash occurred. Another tractor trailer did not secure his trailer load which caused a jack that weighted approximately 200 pounds to fall off. Matt was following in his rig and hit the jack with his tractor. This destroyed his steering axel and he could not control his truck. Matt did the best he could in a truly emergent situation.

His tractor trailer traveled across the highway, into the center median and through the cabal barrier. Although her did strike one other vehicle, he was able to stop his truck in the center median and avoided catastrophic injury to others. But, during the incident a metal bar from under the truck broke through the floorboard into Matt's foot. Matthew was transported via ambulance to the emergency room where he required substantial medical care. Due to the severity of his injuries and higher level of care needed, it was determined that Matthew needed to be transferred to a different hospital for surgery.

Doctors operated on him and he was discharged after 7 days and was able to return to Missouri.

Matt did a great job documenting the crash scene. Here's a picture of the metal bar that went into his foot.



Since Matthew was working at the time of this accident, he had not only a civil claim but also a worker's compensation claim. but because the accident happened in Texas and Matthew's employer is in Indiana and Matthew lives in Missouri, his workers compensation claim was in Indiana. Our office obtained worker's compensation lawyers in Indiana to help get Matthew the treatment and benefits he needed during his recovery.

Once Matthew was released from treatment and settled his workers compensation claim, our office was able to proceed with the civil claim against the at fault trucking company and driver. We usually try to resolve the comp claim before the civil claim for lien purposes. We were able to settle the civil claim for Matthew for \$212,500.

However, since Matthew had a worker's compensation claim, there was a lien on the civil claim for the benefits paid for Matthews weekly benefit payment while he was off work and the medical bills paid through the workers compensation claim.

Our office was able to get a 50% reduction on that lien to ensure that our client received the most money possible in his pocket for the injuries and suffering he sustained in this accident.

We are always happy to help truck driver clients as well as clients who are in accidents out of state. It's good to be able to help Matt navigate the different claims and legal hurdles.



**\$200,000 settlement**

I obtained a great \$200,000 settlement for our client in a contested liability truck accident case. Despite strong evidence in our favor, the trucking company failed to make any settlement offer whatsoever until the day of mediation, when the case ultimately settled.

The defendant truck driver crossed into our client's lane on Interstate 70 and crashed into her with his tractor-trailer. The impact caused our client's car to careen into the median, flip over repeatedly, and come to rest on the driver's side, causing her serious injuries necessitating surgery. The truck driver fled the scene of the accident while our

client was suspended upside-down and had to be extracted by emergency personnel forty-five minutes later.

We investigated and filed suit quickly in the case. It was removed to federal court in the Southern District of Illinois. Defendant's often remove cases to federal court if they can--they force us to win a unanimous jury at trial instead of 9 of 12 in state court.

As a result of the accident, our client incurred significant medical charges. She injured her head, neck, left side, and left shoulder. She tried to treat conservatively with months of physical therapy, injections, and chiropractic treatment. However, when that failed, she ultimately underwent successful shoulder surgery.

The police investigated the scene of the accident and interviewed two witnesses who both stated they saw the truck driver cross into our client's lane. In his report, the officer corroborated these statements based upon tire tracks and markings on the road. The officer wrote that the truck driver initially blamed our client, but then "once faced with the evidence, stopped denying responsibility." The officer issued the defendant driver a traffic citation for "improper lane usage."

Subsequently, the truck driver's employer terminated him. We obtained the Separation Report through discovery, and the reason for termination stated, "Driver was terminated for having an at-fault accident and then falsifying the details of events."

At first glance, this seemed like a clear liability accident. Based on the police report, witness statements, and the Separation Report, you would think that the defendant would make a settlement offer. However, during depositions, both the truck driver and his employer's corporate representative changed their stories and surprisingly blamed our client for the accident, saying she swerved into his lane. The corporate representative was a young safety manager who had never been deposed before.

The owner of the national truck company flew in to observe the deposition and stared down the representative as he futilely tried to explain away the incriminating Separation Report, which he claimed was just an internal document. In their depositions, the defendant's witnesses lacked credibility or remorse, which we did not think would bode well for them in front of a jury. They refused to take any responsibility whatsoever and did not offer our client a dime until mediation.

At the mediation, we reiterated that defendant was an unlikeable corporate truck driver who slammed into our client with a tractor-trailer, lied to police, and was fired for "having an at-fault accident and then falsifying the details of events." After a few hours of negotiating, the defendants finally made the \$200,000 offer that our client and I were pleased with. Sometimes, even when all the evidence is in your favor, you still have to fight to get a reasonable offer.

### **Tom's Story**

This case centered around a crazy wreck involving four vehicles, two of which were tractor-trailers. One of the defendants initiated the wreck by driving their jeep at excessive speeds in wet road conditions on Highway 70 in Missouri. When they tried to slow down, the jeep slid on the wet roadway towards the median wall of the highway. The jeep then struck the left side of another vehicle, which then struck the front side of a tractor trailer. Following this impact, the tractor-trailer travelled off the left-side of the road into the median, struck and went through the median cable barrier, rolled over, and continued onto the westbound interstate 70 highway.

My client, Tom, was driving a tractor-trailer westbound on Highway 70. Without sufficient warning, his vehicle crashed into the tractor trailer which had travelled perpendicular to Tom's vehicle. Tom decided to veer his tractor trailer to the left to avoid

the other tractor trailer, and his tractor ended up travelling into the other trailer. Then, another vehicle rear-ended Tom's tractor, sending it further forward and deeper into the trailer and compressing Tom's body in his own tractor. Consequently, Tom was pinned in his vehicle for approximately four hours before the police found him.

Tom suffered serious injuries, including tension pneumothorax, a traumatic brain injury, sternal fracture, and multiple rib fractures. He underwent extensive medical care and surgeries for his injuries. He also experienced posttraumatic stress disorder, flashbacks, nightmares and anxiety related to being pinned in his vehicle for such a long period of time. We were able to obtain a great settlement for Tom and were happy that we could help him in his recovery. Below are a couple photos from this horrendous wreck.





### **Amman's Story**

Amman's case stems from the same wreck as Tom's, discussed above. The same tractor-trailer that struck and drove through the median and into oncoming westbound traffic on Interstate 70 collided with Amman's pickup truck. Our client's vehicle rotated counterclockwise and continued in a westerly direction. It sustained heavy damage and the driver airbag deployed. The data from the accident indicated that Amman's vehicle was going 58 mph at the time of the collision.

Amman was taken by ambulance to the closest hospital, but was then transported to another hospital to have multiple surgeries performed. He suffered significant injuries to

his chest, head, left arm, left foot, right leg, and abdomen. He also ruptured his Brachiocephalic Artery. He had several surgical procedures, including Exploratory Laparotomy, Small Bowel Resection, Tube Thoracostomy, and Left Elbow Arthrotomy and Irrigation and Debridement, among others.

We kept the pressure on in Amman's case and engaged in extensive litigation. We conducted several depositions of Amman, his treating physicians, and expert witnesses. At the conclusion of the case, we were able to get a great settlement for Amman. Below are photos from this case.





### **Mediation Case**

In another successful case, our client Tonya was commuting to work on a Friday and a truck changed lanes, causing her vehicle to roll into the median. The negligent driver fled the scene of the accident.

When apprehended, the driver did admit fault in the police report but later changed his story during the deposition. The case entered mediation in the Southern Illinois District and a settlement was reached.

This was a new experience for Tonya, but she found the process to be easy due in part to the communication from her legal representation.

“You guys always listened,” she said. “I had multiple questions, and I called multiple times.” We were happy to be there for our client and reach a settlement that our client was pleased with. Check out the photo below of her vehicle following the wreck.



### **Chris's Story**

Our client Chris was injured on February 29, 2016. The car crash occurred when foam from a truck owned by Defendant Ragsdale Construction came out of his truck bed

on Interstate 55. This caused another car to swerve and strike a vehicle, pushing it into Chris's vehicle. Chris then crashed into the median.

We took depositions and showed that folks on the highway saw a metal plate vertical in the back and thought it was about to come off. The defendant truck driver (Tucker) agreed that the people who were stopping did not know what was coming out of his truck-a piece of Styrofoam or a chunk of metal. The truck driver never looked to see why the Styrofoam was getting out onto the road. He did not inspect it.

Tucker admitted to me in a deposition that:

- The lady in the car behind him said that the metal panel stood up and thought it was going to flip out of the back of the truck.
- "Everything was up in the air."
- Drivers thought it was going to fall out for at least 5 seconds.
- It is not safe to carry a load without visually being able to see it
- He could not see his load through the windows or the mirrors.
- Had he known what was going on he would have not continued and would have pulled over and put another strap on.
- He had additional straps that he did not use.
- He could have put 3 or 4 on rather just the 1.
- After the incident, he didn't do anything but change the way he drove with that load.
- There had been no change with Ragsdale.
- State law required him to secure the load
- He could have put plywood over the whole top of the load to avoid the incident.
- Five vehicles were involved in the accident

Chris sustained injuries to his left leg, neck, back, and head – the more severe injuries were to his head and neck. He had an MRI which showed a small brain hemorrhage. He received chiropractic care for his neck and back. His neck MRI showed disc bulges. Chris did physical therapy and had four neck injections. His brain and neck injury also caused him to experience dental issues, as clenching his neck and jaw caused him to grind his teeth. He saw Dr. Nikodem multiple times for broken teeth and dental implants.

Additionally, Chris experienced severe headaches for four to five months. He had cognitive difficulties, including memory loss and difficulties with focus and concentration. Although his symptoms have improved, Chris still has an occasional headache, cognitive difficulties and neck pain.

## CHAPTER 10:

### WHAT TO DO AFTER A TRUCK CRASH



Now that you have heard stories from actual truck cases I've worked on, you can probably imagine how unsettling, surprising, scary and painful they can be. Often truck crash victims are in shock following the wreck. Here are the straightforward steps you should take after a truck crash:

1. Make sure your **vehicle is in a safe place**. If it's not, move it to a safe place.
2. **Call 911** for emergency medical and police assistance. Are you OK? Are your passengers OK? Assist the injured. Consider learning CPR. It's a life changing course. Do not attempt CPR if you are untrained. Remember the ABCs – Airway, Breathing and Chest Compressions. Often there can be broken bones, spinal cord injury and trauma – so be careful and do not move the injured unless it's emergent to do so.

3. **Safely exit the vehicle and talk to the truck driver.** Write down his/her name, address, phone number, driver's license number, name of insurance company, policy number and phone number. Take a picture of the driver's license and insurance card.

Look at the truck driver's license and insurance card to write the information down yourself. Don't trust what they say. Talk to the truck driver about their conduct prior to the accident. Be nice, but ask what they did wrong. If it is the truck driver's fault, get them to say it's their fault for causing the accident and notice if they apologize to you. Inquire with them a little:

“Didn't you see that light?”

“Why were you going too fast?”

“Why did you pull out in front of me?”

“How come you didn't stop before you rear-ended me?”

They may say things to you like, “I was on my phone,” “I wasn't paying attention,” “I'm sorry” or a variety of other things.

4. **Call the police** and get a police report for every trucking accident. A police report ensures that an independent person is taking down all the information, identifying any witnesses, and evaluating the crash. Policemen are trained to investigate [auto accidents](#). Give the police officer a short, clear statement of how the accident happened. Ask the police officer for his/her full name, badge number, organization (e.g., highway patrol or local town or municipality) and **police report number**.

5. **Take pictures** of the accident scene, property damage to both vehicles, skid marks, etc. Use your cell phone at the scene to document what happened. Take pictures of the defendant's insurance card and driver's license and/or witness information.

6. **Get witness names and phone numbers** and write them down yourself. They may not be included in the police report. I have had many instances where the great witness is not in the police report and their information is lost.

7. Get any **medical attention you need promptly**, whether it's on the scene, an hour later, that night or the next day. Be sure to get medical attention – ER, urgent care, primary care doctor or chiropractor.

8. Document everything and all the matters relating to your claim.

I intentionally limit this chapter to three pages to try to keep this advice simple and direct. The steps to take immediately after a wreck should be straightforward. With the advent of cell phone picture taking, what to do after a crash has changed. Technology change and advancement is a real opportunity to better document a crash.

**CHAPTER 11:**  
**ACT QUICKLY ON YOU TRUCK CRASH CLAIM**  
**AND DO NOT SETTLE TOO EARLY**



Do not ignore time limits and be proactive in pursuing your truck crash claim. Justice delayed is justice denied. Contact the insurance company and advise them of the incident and your claim, get medical attention, and take proper steps to strengthen your case. We have many stories of people coming to us too late where we cannot find key witnesses in cases, cannot identify photographs, cannot investigate the scene of the accident or look at skid marks. There is a wealth of information that can be obtained by rapid investigation in a case.

You might assume the truck driver will testify accurately about the incident, that witness information will be in the police report, and that the defendant's insurance

company will treat you fairly--but sometimes this does not occur. Hiring a lawyer to investigate a serious truck collision is important. We have investigators and experts that can go to the scene. We will call up witnesses and take recorded statements of what occurred in the incident. We will secure photos or physical evidence that might be important to the case. We will communicate right away with the defendant's insurance company to ensure prompt and fair resolution of the claim.

There are also time limitations for filing lawsuits for truck crash claims. Missouri has a five-year Statute of Limitations for personal injury claims (vehicle accidents) and Illinois has a two-year Statute of Limitations. This means that if no case is filed within that time the entire claim is time barred. Note that the limitations time for a wrongful death claim in Missouri is shorter – three years. There are other limitations periods that might affect your claim as well.

The next important thing to remember is to not settle your claim before you know the full extent of your injuries. If you ever settle your claim and sign a release, **you are fully and finally settling and releasing your claim.** You will be unable to recover any more money in the future. Releases contain language that you are fully and finally settling and completely resolving your claim for all injuries from the auto accident, whether known or unknown. You do not want to settle your claim and then find out that you need additional medical care or have long lasting pain, problems, or disabilities. Maybe the worst mistake that a truck accident victim or their lawyer can make is to settle a case and then discover that the injured party needs surgery a month later.

On many occasions, back or neck problems and injuries linger for longer periods of time and it is only after an MRI or other detailed study that herniated discs or underlying trauma is identified. We have represented car accident victims who tried to recover

without surgery through physical therapy, strengthening and exercise, injections, and other therapy, but finally resort to surgery. Typically, medical providers want to try the least invasive and conservative treatments first and only after those have failed opt for surgery. You do not want to settle a claim for \$10,000 and then later find out you need a \$50,000 surgery.

It is important too to identify the truck company and its insurer so a timely claim can be made. Trucking companies fail or go out of business. Insurance companies do too. If they do, you may have no avenue for recovery. We also need to navigate where the case should be filed. Of course, we try to settle cases first, but find we often need to file suit and aggressively pursue the case to get a full recovery for our clients.

Even more important is the statute of limitations in which a person has to file a lawsuit for their personal injury or be forever barred. **Some states have time limits as short as one year (Kentucky and Louisiana).** Here is a comprehensive list of the others:

State	Statute of Limitations	State Law
Alabama	2 years	<a href="#">Ala. Code Sec. 6-2-38</a>
Alaska	2 years	<a href="#">Alaska Stat. Sec. 9.10.070</a>
Arizona	2 years	<a href="#">Ariz. Rev. Stat. Sec. 12-542</a>
Arkansas	3 years	<a href="#">Ark. Stat. Sec. 16-114-203</a>
California	2 years	<a href="#">Cal. Code of Civ. Proc. Sec. 335.1</a>
Colorado	2 years	<a href="#">Colo. Rev. Stat. Sec. 13-80-102</a>
Connecticut	2 years	<a href="#">Conn. Gen. State. Sec. 52-584</a>
Delaware	2 years	<a href="#">Del. Code Ann. Title 10, Sec. 8119</a>
District of Columbia (D.C.)	3 years	<a href="#">D.C. Code Ann. Sec. 12-301</a>

Florida	4 years	<a href="#"><u>Fla. Stat. Ann. Sec. 95.11</u></a>
Georgia	2 years	<a href="#"><u>Ga. Code Ann. Sec. 9-3-33</u></a>
Hawaii	2 years	<a href="#"><u>Haw. Rev. Stat. Sec. 657.7</u></a>
Idaho	2 years	<a href="#"><u>Idaho Code Sec. 5-219</u></a>
Illinois	2 years	<a href="#"><u>Ill. Ann. State. Ch. 735, Art. 5, Sec. 13-202</u></a>
Indiana	2 years	<a href="#"><u>Ind. Code Ann. Sec. 34-11-2-4</u></a>
Iowa	2 years	<a href="#"><u>Iowa Code Ann. Sec. 614.1</u></a>
Kansas	2 years	<a href="#"><u>Kan. Stat. Ann. Sec. 60-513</u></a>
Kentucky	1 year	<a href="#"><u>Ky. Rev. Stat. Sec. 413.140</u></a>
Louisiana	1 year	<a href="#"><u>La. Civ. Code Ann. Art. 3492</u></a>
Maine	6 years	<a href="#"><u>Maine Rev. Stat. Ann. Title 14, Ch. 205, Sec. 752</u></a>
Maryland	3 years	<a href="#"><u>Md. Ann. Code Sec. 5-101</u></a>
Massachusetts	3 years	<a href="#"><u>Mass. Gen. Laws, Art. 260, Secs. 2A, 4</u></a>
Michigan	3 years	<a href="#"><u>Mich. Comp Laws Sec. 600.5805(9)</u></a>
Minnesota	2 years	<a href="#"><u>Minn. Stat. Ann. Sec. 541.05, 541.07</u></a>
Mississippi	3 years	<a href="#"><u>Miss. Code Ann. Sec. 15-1-49</u></a>
Missouri	5 years	<a href="#"><u>Missouri Ann. Stat. Title 35, Sec. 516.120</u></a>
Montana	3 years	<a href="#"><u>Mont. Code Ann. Sec. 27-2-204, 27-2-207</u></a>
Nebraska	4 years	<a href="#"><u>Neb. Rev. Stat. Sec. 25-207</u></a>
Nevada	2 years	<a href="#"><u>Nev. Rev. Stat. Sec 11.190</u></a>
New Hampshire	3 years	<a href="#"><u>N.H. Rev. State. Sec. 508.4</u></a>
New Jersey	2 years	<a href="#"><u>N.J. Stat. Ann. Sec. 2A:14-2</u></a>
New Mexico	3 years	<a href="#"><u>N.M. Stat. Ann. Sec. 37-1-8</u></a>
New York	3 years	<a href="#"><u>N.Y. Civ. Prac. R. Sec. 214</u></a>
North Carolina	3 years	<a href="#"><u>N.C. Gen. Stat. Sec. 1-52</u></a>

North Dakota	6 years (2 in wrongful death)	<a href="#"><u>N.D. Cent. Code Sec. 28-01-16, 28-01-18</u></a>
Ohio	2 years	<a href="#"><u>Ohio Rev. Code Sec. 2305.10</u></a>
Oklahoma	2 years	<a href="#"><u>Okla. Stat. Ann. Title 12, Sec. 95</u></a>
Oregon	2 years	Ore. Rev. Stat. Sec. 12.110
Pennsylvania	2 years	<a href="#"><u>42 Pa. Con. Stat. Sec. 5524</u></a>
Rhode Island	3 years	<a href="#"><u>R.I. Gen. Laws Sec. 9-1-14</u></a>
South Carolina	3 years	<a href="#"><u>S.C. Code Ann. Sec. 15-3-530</u></a>
South Dakota	3 years	<a href="#"><u>S.D. Comp. Laws Ann. Sec. 15-2-14</u></a>
Tennessee	1 year	<a href="#"><u>Tenn. Code Ann. Sec. 28-3-104</u></a>
Texas	2 years	<a href="#"><u>Tex. Civ. Prac. &amp; Rem. Code Sec. 16.003</u></a>
Utah	4 years	<a href="#"><u>Utah Code Ann. Sec. 78-12-28</u></a>
Vermont	3 years	<a href="#"><u>Vt. Stat. Ann. Title 12, Sec. 512</u></a>
Virginia	2 years	<a href="#"><u>Va. Code Sec. 8.01-243</u></a>
Washington	3 years	<a href="#"><u>Wa. Rev. Code Ann. Sec. 4.16.080</u></a>
West Virginia	2 years	<a href="#"><u>W. Va. Code Sec. 55-2-12</u></a>
Wisconsin	3 years	<a href="#"><u>Wisc. Stat. Ann. Sec. 893.54</u></a>
Wyoming	4 years	<a href="#"><u>Wy. Stat. Ann. Sec. 1-3-105</u></a>

## **CHAPTER 12:**

### **INSURANCE REQUIREMENTS FOR TRUCK DRIVERS**



Commercial trucking can be a dangerous activity involving bodily injury and property damage. Around 130,000 people are injured each year from accidents involving commercial trucks. Additionally, the average payout for a commercial truck accident in Missouri is approximately \$59,000 – but our Firm’s is much larger. Given the risk of bodily injury and costly property damage, it is important that truck drivers have adequate insurance coverage.

Truck drivers sometimes do not have commercial truck insurance or do not have enough insurance. Missouri and Illinois mandate every driver have a certain amount of public liability insurance. This insurance consists of Bodily Injury coverage which pays for hospital bills of motorists hurt in truck accidents, as well as Property Damage coverage

which pays for repairs to vehicles and other property damaged in an accident. For commercial truck drivers, liability insurance requirements depend in part on the freight they transport. For example, if a truck driver transports oil in Missouri then they must carry liability insurance of at least \$1,000,000. If a truck driver only transports household goods, Missouri's minimum liability insurance requirement is \$300,000. In addition to liability insurance, Missouri requires Cargo insurance at a minimum of \$2,500 per vehicle and \$5,000 per catastrophe.

A Missouri truck driver should get an intrastate only USDOT Number and comply with the above minimum insurance requirements. However, insurance requirements are more demanding for truck drivers who work in multiple states. In addition to the insurance limits mentioned above, interstate truck drivers must comply with the semi-truck insurance requirements set out by the Federal Motor Carrier Safety Administration (FMCSA). The FMCSA requires interstate truckers to meet minimum limits of public liability insurance coverage depending on the type of freight they haul, with typical liability limits between \$750,000 and \$1,000,000. For truck drivers who transport non-hazardous freight in a truck under 10,001 pounds, the minimum required limit of public liability insurance is \$300,000. For those who transport non-hazardous freight in a truck weighing over 10,001 pounds, the minimum required limit is \$750,000. Truckers who transport oil are required to have a minimum of \$1,000,000 in public liability insurance coverage. Finally, truckers who transport hazardous materials other than oil are required to have a minimum coverage of \$5,000,000.

Beyond the public liability insurance requirements mentioned above, truck drivers may be required to carry additional coverage such as Cargo insurance, Bobtail insurance, and Physical Damage insurance. Cargo insurance covers the freight truck drivers transport

in trailers. While not mandated by the FMCSA, Cargo insurance is demanded by most shippers that truck drivers do business with. Cargo insurance limits depend on the type of freight transported, with the typical limit being \$100,000.

Bobtail insurance covers property damage or injuries to others that truck drivers may cause while the trailer is detached from their truck. This insurance may be required if the truck driver is not an owner-operator with primary liability insurance, or if the truck driver owns their truck, is leased onto a Motor Carrier, and drives without the trailer attached. For example, a truck driver may need Bobtail coverage if they have a lease with a Motor Carrier and work under their authority.

Physical Damage insurance is a general term for a group of insurance coverages that protects truck drivers' personal tractor or trailer from accidents. Physical Damage insurance can include collision insurance, comprehensive insurance and combined additional coverage insurance. Collision insurance applies when a truck driver's vehicle is damaged in an accident, while comprehensive insurance applies in situations other than collisions, such as when a truck is stolen.

Regardless of whether a truck driver drives only in the state of Missouri or transports freight through several states, it is important that they have the proper minimum insurance coverage required by law. Being properly insured reduces the problems that arise from trucking accidents, and helps ensure that those injured in truck crashes are properly compensated.

**CHAPTER 13:**  
**OTHER INSURANCE CONSIDERATIONS: UNDERINSURED AND**  
**UNINSURED MOTORIST COVERAGE**



Now that I have explained the insurance requirements for truck drivers, I want to address other insurance considerations that may be important in your truck crash case. This chapter will explain two specific types of insurance, uninsured motorist coverage and underinsured motorist coverage.

## **Uninsured Motorist Coverage**

All auto insurance policies carry uninsured motorist coverage (in Missouri and Illinois) in the amount of \$25,000. This provision means that if you, a family member or friend are injured in a truck accident and the driver who was at fault did not have insurance, and is uninsured, your insurance pays. This includes compensation for medical expenses, wage loss, pain and suffering and emotional distress. Every policy holder has this coverage and it is the same as if the other driver actually did have insurance, but your insurance policy provides coverage for the other driver's negligence. Typically, uninsured motorist coverage does not factor in truck crash cases, because truck drivers almost always have insurance unless they are completely breaking the law. However, if the truck driver crashes into you and then flees the scene, uninsured motorist coverage kicks in.

Uninsured coverage applies in a wide variety of situations. If there is a hit and run or phantom truck driver, your uninsured coverage applies. If your vehicle is struck by a truck driver who then drives away and you don't know who it is, if you're walking and you are struck as a pedestrian by another driver who leaves, or a circumstance where you do not know or cannot track down the identity of the phantom driver, you have an uninsured claim under your own policy to recover all your damages. More typically this coverage is used in cases where the driver who rear-ended you or pulled out and struck you or did not look when they changed lanes and struck your vehicle does not have insurance. Also, they could have failed to pay their premium and their insurance was cancelled even though they had an insurance card at the scene and you think they had insurance. Under these circumstances, you can recover under your uninsured policy.

You should still make an uninsured claim even if you are worried your premiums may go up. We do not know why or how insurance companies increase premiums-some do

not increase it with a claim and some do. Further, you already have a claim on file--you have likely asked to get paid for your property damage, or have a med pay benefit that you are using. Most of my clients who had their insurance increase a little bit following an uninsured claim end up going out and finding cheaper insurance with another company that provides better coverage. We often stay with our insurance companies for a long time and don't look around for different prices or benefit shop. Moreover, your uninsured claim may be worth a lot of money and you may be entitled to a significant benefit and compensation for that claim. Why would you not make an uninsured claim for \$50,000 or \$100,000 if your rates are going to go up \$50 every 6 months? The reason why you pay these premiums is to get the benefits of the insurance coverage when you need it. If you are reading this and are contemplating an uninsured claim, you need it.

Amount of uninsured coverage and stacking are two important areas. You may just have the minimum uninsured amount, or you may have bought higher uninsured coverage. We can figure this out for you, or you can call your insurance agent and find out yourself. Have them email you the terms of your policy or your declaration page. Sometimes insurance companies print this off on your insurance card. Many times, insurance companies sell \$50,000 uninsured policies so you may have that amount of coverage. In addition, there is a legal idea called "stacking" insurance coverage. The law in Missouri is that you get to stack the minimum \$25,000 uninsured from every vehicle you own under that same policy. This is because uninsured coverage is mandatory and the State of Missouri, both through statutes and court decisions, require that coverage. For example, if you are injured and your vehicle has \$25,000 of uninsured coverage, but you also own two other vehicles that are insured on that policy, you will have \$75,000 in uninsured coverage. Insurance companies will never tell you this and very often try to

settle uninsured claims directly with their claimants without advising them about stacking. I have had instances where a family with very large damages is contemplating a \$25,000 settlement that is being pushed by an insurance company. Upon inquiry we discovered that family had 3 additional vehicles and actually had \$100,000 in coverage available. If you settle for the \$25,000 and sign a release, you cannot go after the additional coverage. There are also unique circumstances if you are driving a company truck or are a pedestrian that provides you this coverage as well.

Make sure you get fully compensated for all damages regardless of whether you are pursuing an uninsured claim against your own insurance company. You should make sure you get all your medical treatment and reach your maximum medical improvement. Your claim should include all of your medical expenses, your wage loss damages, and all the pain you have gone through and the emotional distress you have experienced. You also should get your medical payment coverage in addition to your uninsured claim.

In conclusion, there are tragic examples of people and families being significantly injured (or killed) in automobile or truck crashes where the defendant has no insurance or fled the scene of the accident. Make sure you pay yourself back for those losses and provide you and your family financial security with an uninsured motorist claim. You bought and paid for that insurance for a reason and it should be there to help you or your family under these circumstances. Too often, your insurance company is not going to fully inform you about all of your benefits, or pay you adequately. I have had many examples of this--real, tragic losses where the insurance company does not tell their insured that they can make an uninsured motorist claim or does not tell their insured that they can stack their coverage. It is extremely important to talk to a lawyer about this to navigate the claim, insurance, and damage aspects of the uninsured claim.

## **Underinsured Motorist Coverage**

Although not mandatory, many truck insurance policies contain coverage for when a negligent driver injures you or your family and that driver does not have enough insurance to cover all your damages. If your damages are \$100,000 and the defendant driver who struck your truck or hit you while you were walking only had \$25,000 in insurance coverage, you are underinsured for \$75,000. Of course, truck drivers are required by law to have minimum coverage above \$25,000, but not all truck drivers are properly insured. So, all insurance companies sell coverage to fill in this underinsured gap. To find out if you have underinsured coverage, look on your insurance card or call your insurance agent.

To make an underinsured claim, you first have to settle the claim with the main tortfeasor, or person who injured you, and exhaust their coverage. So, if you are rear-ended by a negligent driver, you first have to resolve the claim against the person who rear-ended you. This means getting all of your medical care, reaching your maximum improvement, and making a claim against that driver. Sometimes these cases will settle before suit, sometimes after you hire a lawyer and suit is filed. It is very important to note you have to get all of the money available from the negligent driver. If the negligent driver has \$25,000 in insurance, and you settle that claim for \$20,000 you cannot get underinsured coverage. You must completely exhaust all other available insurance before you can make a claim for underinsured coverage. So, under the previous example, you must settle the claim against the driver who rear-ended you for \$25,000. It is important that you first put your underinsured carrier on notice, and let them know that you have the claim, let them know that you are settling and resolving the case against the driver who hit

you, and make sure they do not object. Then, your claim is ripe against your underinsured carrier. This does not mean that you cannot let them know early on about the claim, you should notify them when you file. This should be done in writing, and they will give you a claim number.

Very often insurance companies will not tell you that you have underinsured coverage or tell you how to make that claim. Often, they will have separate claims adjustors and separate departments for underinsured coverage. They do this for a reason--to make it harder to make an underinsured claim. The adjustor for your property damage and your medical payment coverage will not tell you that you have a possible uninsured claim or a possible underinsured claim. Rather, you must press the issue. As a lawyer, I even have to pursue these vigorously. I recently made a clear underinsured claim and had adjustors calling me asking me if I was really trying to settle a property damage claim, or get medical payment coverage or what exactly I was writing about. They knew and it was perfectly clear--but by putting up obstacles they decrease their payouts and improve their profits. Make sure that when you file an underinsured claim that you do so clearly in writing and that the insurance company assigns you an underinsured claims adjustor separate from any property or med pay adjustor. Communicate with that adjustor about the status of the claim and advise that adjustor when you are about to settle and resolve the claim against the defendant who was negligent.

With underinsured coverage, there are “set off” and other issues so it is sometimes difficult to determine the exact amount of coverage. Underinsured policies are often written to say that they get a “set off” or credit for the amount you recovered from the underlying insurance of the person who injured you. This is actually a misrepresentation on the part of the insurance company that is regularly done. For example, you buy \$100,000 in

underinsured coverage and it is promised as such, and you pay the premiums on that. What you do not know is that it really only offers \$75,000 in coverage. Why? Assume that you are injured by a negligent driver and your damages are \$500,000 (because you herniated a disc in your neck, had to have neck surgery, have permanent pain and problems for that, need lifelong medical treatment and there are significant wage loss damages). You sue the driver who rear-ended you and caused this accident and you settled the claim for his insurance policy limits of \$25,000. Now you go to your underinsured carrier and make a demand for the \$100,000. They will say that under a part of your policy the amount that you got from the driver who rear-ended you is credited against the policy limits of your underinsured coverage so you can only get \$75,000. If the driver who rear-ended you had \$100,000 and you settle and resolve that claim for that full \$100,000, you can make no underinsured claim. The amount to be credited against the coverage is equal to the amount of insurance. I have long thought that this is a misrepresentation and improper tactic on the part of the insurance companies. Every driver in Missouri is going to have at least \$25,000, and if that is credited against the underinsured policy amount, that reduces the amount of underinsured coverage by \$25,000. If the driver who hit you has no insurance you have an uninsured, and not underinsured, claim.

Many policies try to limit underinsured coverage. For instance, if the driver did not have any insurance, then it is an uninsured claim, not underinsured. The insurance policy will preclude you from recovering from the underinsured provision of the policy under these circumstances. If you do not get all of the money in a settlement from the underinsured driver who hit you or if you do not communicate to your insurance company, they may find grounds to deny your claim. Many times, insurance companies will decline coverage and say there is no coverage, or that they will not pay a loss, with strained and

inaccurate readings of the insurance policy. Make sure that you get a lawyer or someone to review these insurance policies. Do not take the insurance company's word for this. Even though you are their insured, they are not on your side and they are actively working to decrease your recovery as much as they can. It is just the way insurance companies operate. They will wrongly read their policies, they will misinterpret policies, they will ambiguously word policies on purpose to give them wiggle room, and employ many other tactics to decrease the amount they have to pay out to claimants, including their own insured customers. They do not owe a fiduciary duty to their insured clients, even if you think they should.

Regarding damages, make sure you get all your medical care and fully complete your medical course of treatment. It may be that when you are completely done with treatment you still are not 100% and have some degree of disability. It is only after you complete your medical care and reach your maximum medical improvement that you should resolve your case.

Procedurally, this is an insurance claim that only sometimes results in litigation. Make your claim to your insurance company in writing and make sure that you have an underinsured claim, not just a general claim. Verify that you have a claim number and a claim representative with whom you are communicating. Ensure that you hire a lawyer before you sign any releases or settle any underlying claim. If the insurance company takes an improper position and does not fully pay your underinsurance claim, you should file a suit and litigate against them; hire a qualified lawyer who has handled similar claims, knows the procedures, and has experience in interpreting the insurance policy and challenging the insurance adjustor's slanted interpretation of insurance policy language. We often find more coverage after the initial denial from the insurance company.

Sometimes that is through persuasion with the insurance company and sometimes it is through a lawsuit, litigation, and a judgment against the insurance company. We have many examples of this on our website at [burgerlaw.com](http://burgerlaw.com).

Note that in Illinois, underinsured motorist coverage claims are arbitrated and you don't have the right to file a suit in court. In Missouri, those arbitration provisions are not enforced. Arbitration in Illinois fosters quicker resolution of these claims. But the downside is that you do not have the right to a jury trial and it can and does lead to insurance company abuse. See the appendix for unique insurance articles.

## **CHAPTER 14:**

### **HOW SOCIAL MEDIA CAN AFFECT YOUR TRUCK CRASH CASE**

You should be cautious about posting details of your truck crash on social media. In every lawsuit we file, our clients are always asked about Facebook posts, Twitter feeds, or any other social media statements about the incident or their injuries. You should never minimize or misrepresent injuries on social media. It would be irresponsible and unethical for a person to make a claim that they are seriously injured or totally disabled from a truck accident, and post pictures of them skiing, bike riding, or doing intense physical activity thereafter. We have many examples of this, and it could work both ways.

I once cross-examined a defendant driver in a drunk driving case who was trying to be remorseful about what they had done to their friend. After expressing remorse and saying they would never do it, their Facebook page was exhibited and I asked them why they had joined the “I like to get drunk and don’t give in F\*\*\*” group only 2 weeks after the incident. This shut down their defense and the case settled shortly thereafter.

So, make sure you are careful in your social media presence after a truck crash or any accident. Have your social media presence consistent with your injury and symptoms. Please do not put yourself in a position of making a statement about your injury to the insurance company, in a lawsuit, in a deposition, or at trial that is inconsistent with what you put on social media or what others put.

## **CHAPTER 15:**

### **TRUCK CRASH INVESTIGATION AND LITIGATION**

When retained in a Truck Crash case, Burger Law immediately investigates the case. We go to the scene, collect all relevant documents like police reports and accident reconstruction reports, obtain pictures and video, get alcohol and drug test results, medical records, etc. We interview witnesses and take statements where necessary. We usually hire our own accident reconstruction expert who will investigate the crash and be able to render opinions about speed, distance, forces of impact, what happened in the crash, what safety rules were broken and how those rule violations caused the crash and injuries or death resulting therefrom. With our experts we almost always remove and review the “black box” or event data recorder from vehicles involved to get crucial information about speed, brakes used, yaw or sideways movement, and whatever else the data will provide. Sometimes there is no data to obtain – either because the black box was not working or the crash did not trigger a recording. We make a thorough and quick assessment of all relevant liability facts and evidence.

We also identify the truck drivers and the company for which they are driving – and all other drivers, vehicle occupants and witnesses. We contact the truck drivers, truck companies and their insurance companies to advise we are involved in the case and to communicate with us. We proceed with the claim and often help our clients navigate medical insurance, bills and doctors and medical tests. If they do not need help, our clients keep us informed of their medical course. We get all the medical records and bills and other damage evidence (e.g., wage loss). We often present this to the other side and try to settle or resolve the case prior to filing a lawsuit. We are sometimes successful in early

resolution, but often have to file suit and litigate a case to get full value for our clients' damages.

If a case does not settle, we file a lawsuit and engage in litigation. Clients often ask me - what exactly happens during litigation? How does the process work?

Well, if someone is injured, they have a legal claim, but need to take action to pursue it. To do so they file a lawsuit, also called a complaint or petition, and begin litigation. Litigation is the process where lawyers discover and prepare their evidence for trial. Evidence can be witness testimony, both normal (lay) and expert, documents, pictures and videos, objects like a part of a car, a glove or a knife, and answers to questions and requests for admissions by parties.

Litigation begins after a complaint is filed. Then the parties to the case usually exchange written requests for information and documents. Those are called interrogatories, which means questions or requests for production of documents to get documents. Sometimes parties can inspect things like a vehicle or someone's property. There are also requests for admissions in which one party asks another party to admit something. After the initial questions are answered and after the initial documents are exchanged, typically people do depositions.

In a deposition, the opposing lawyer gets to ask the party or witnesses questions until they are done or reach a time limit in some jurisdictions. The lawyers are supposed to try to keep the questions relevant to the claims at issue. There are a lot of cases that can be litigated: breach of contract, probate, intellectual property, but we mostly do personal injury litigation here at Burger Law.

In a personal injury case, a witness typically discusses the incident or negligence of the defendant that caused the injury to the person: the car crash, the medical error, the slip

and fall, what caused the death, and workers compensation cases, work-related injury, the truck crash, etc. Testimony is provided about the incident; the damages; what the person was like before and what they're like after. When I am taking the deposition of the defendant, I'm typically asking them about their conduct: Are they owning up? Have they taken responsibility for what they did? Did they hurt the person? How did they hurt the person? Are they admitting liability, not admitting liability? Do they contest the facts that are at the basis of the matter?

There are a whole host of things that go into depositions, and a court reporter is taking everything down and the witness has sworn to tell the truth. This is how we get the testimony of witnesses and know what the testimony is going to be like at trial because trials should not be an ambush. You should know basically what the story is, and before we go into court to take the court and the jury's time, we need to be able to establish the facts. You only want to present to the jury what you can prove and what the facts are, and so we use depositions and these exchanges of information to do that. I have a number of videos on litigation.

I also have a number of videos that I use for my clients to prepare for depositions. There is a rule of civil procedure that affords the parties to take depositions. You can take depositions of the opposing party, the plaintiff or defendant, and their relatives or friends who have relevant evidence about the case. You can take depositions of witnesses. You can take depositions of outside companies that either have records or information important to your case. You can take depositions of experts. Sometimes we hire experts on liability to prove how or why a defendant was negligent.

In a truck crash case, we hire experts to talk about their opinions about speed, distance, the forces involved and the errors done by the truck driver. Those experts can

testify about the vehicle's data recorder, damage to vehicles, skid marks, etc. We also take depositions of medical doctors where they come in and say, "I treated this client. They have these injuries. They were caused by this car crash or this slip and fall, and here's what my diagnosis is, my prognosis, my treatment and my surgery. Here's their past medical, here's their future medical," and then we go into detail sometimes with diagrams and other things to try to show the jury, take to the jury, convey to the jury the types of injuries that our client sustained.

Sometimes you have depositions of experts about economic damages or other types of things. When depositions occur, they go question, answer, question, answer, where the lawyer asks the question and the deponent answers the question. The lawyer waits till the deponent is done with their answer, and the deponent gives or the witness gives the lawyer the same courtesy, and you basically go through questions to try to elicit evidence that is relevant at trial.

If a lawyer goes too far a field or is not courteous to the witness, that can draw objections from the other side. They may object that you're asking irrelevant questions or you've already asked it once. There are a whole host of evidence objections a lawyer can make. The same type of objections you would make at trial, you can make at a deposition to preserve your record, and all this is taken down by a court reporter who records the questions and the answer. And those depositions can go on for some time. The more experience you have with cases, usually the shorter your depositions are. I try to hone in on the issues I need to inquire about and focus on that and not waste anybody's time, and I certainly want to honor the time of the witness and the other lawyers as well.

And a lawyer can use documents in a deposition. Witnesses can be shown documents and asked to interpret documents at depositions. A witness usually wants to

prepare for the deposition and think about the questions that are going to be asked, work with their lawyer to prepare, to get focused on the types of questions and what appropriate answers are to get the accurate information, know what documents are going to be looked at during the case and not be surprised. You may not know exactly how many feet were between you and the truck when you first saw it come through. A witness can be asked to provide their best guess and can also give their best estimate of distance, speed and other things.

Sometimes lawyers try to be too pushy or too aggressive in depositions. They think they can influence answers. That's inappropriate. Sometimes the defense lawyer thinks by objecting, they're trying to answer the question for their witness. That's an effective tactic; but equally inappropriate as well.

Sometimes in litigation, the lawyers have disputes with the other side about what evidence they are entitled to get, which is resolved in motion practice. There are many types of motions - to compel discovery, to dismiss a case, for summary judgment for one side before a trial (and if so then there will be no trial).

Truck crash investigation and litigation is a huge topic which is only touched on in this chapter. We live this litigation on a daily basis – and teach other lawyers how to do this. On our [Burgerlaw.com](http://Burgerlaw.com) website and our you tube channel, we have a lot of information about the claims and litigation stages of cases. Call us if you have more questions or need our help.

**Appendix 1**

**IN THE CIRCUIT COURT OF  
THE SIXTH JUDICIAL CIRCUIT  
MACON COUNTY, ILLINOIS**

\_\_\_\_\_, individually, as Special )  
Administrator, and as Personal Representative )  
of the Estate of \_\_\_\_\_, )  
Deceased, )

Plaintiff, )

v. )

\_\_\_\_\_)  
\_\_\_\_\_ )

Serve at: \_\_\_\_\_ )

and )

\_\_\_\_\_ )

Serve at: \_\_\_\_\_ )

\_\_\_\_\_ )

Defendants. )

Cause No.:

**JURY TRIAL DEMANDED**

---

**VERIFIED COMPLAINT**

**COMES NOW** Plaintiff \_\_\_\_\_, individually, as Special Administrator,  
and as Personal Representative of the Estate of \_\_\_\_\_, deceased, by and through  
her attorney, Gary Burger, and for her cause of action against Defendants \_\_\_\_\_  
\_\_\_\_\_ under 740 ILCS section 180, *et seq.*, states as follows:

**ALLEGATIONS APPLICABLE TO ALL COUNTS**

1. Plaintiff [REDACTED] is a resident of Macon County, Illinois, who was married to her deceased husband [REDACTED] at the time of his death. [REDACTED] had one child at the time of his death, [REDACTED].

2. Defendant [REDACTED] [REDACTED] is a Delaware Corporation with a principal place of business in Springfield, Illinois. Defendant [REDACTED] distributes PepsiCo beverages and other PepsiCo products throughout the State of Illinois including a distribution center located in Macon County Illinois at [REDACTED] [REDACTED]. Defendant [REDACTED] can be served at the above address.

3. [REDACTED] is a North Carolina corporation with a principal place of business in Harrison, New York. [REDACTED] manufactures, sells, and advertises [REDACTED] beverages and other [REDACTED] products throughout the United States, and conducts a substantial amount of business throughout Illinois. [REDACTED] beverages and products are distributed by corporations and companies such as Defendant [REDACTED].

4. Defendant [REDACTED] is an Illinois individual who resides in Macon County, Illinois. At all relevant hereto, Defendant [REDACTED] was employed by Defendant [REDACTED]. Defendant [REDACTED] can be served at the above address.

5. On or about July 12, 2019, shortly after 1:20 p.m., [REDACTED] was operating his vehicle in the northbound lanes of Illinois Route 121. [REDACTED] daughter, [REDACTED], was a passenger in his vehicle.

6. On that same date and time, Defendant [REDACTED] was operating a [REDACTED] Semi-Truck owned by Defendant [REDACTED]. Defendant [REDACTED] was working for Defendant [REDACTED] at that day and time.

7. On that same date and time, Defendant [REDACTED] was traveling westbound on Spitler Park Plaza drive, after delivering [REDACTED] products to Huck's Convenient Food Store at 150 Spitler Park Drive and en route to another delivery of [REDACTED] products for Defendant [REDACTED].

8. On that same date and time, Defendant [REDACTED] crossed into the northbound lanes of Illinois Route 121 in order to turn into the southbound lane of Illinois Route 121 and drove the [REDACTED] Semi-Truck directly into the path of [REDACTED] vehicle, causing a collision between the two at about 1:24 p.m.

9. The impact of this collision was severe. On July 12, 2019, Plaintiff [REDACTED] died from the accident and was pronounced deceased at the scene.

10. The Illinois State Police cited Defendant [REDACTED] for failure to yield at the stop sign controlling his travel at the intersection of Illinois Route 121 and Spitler Park Plaza in Macon County Case Number [REDACTED].

11. A driver of a delivery truck has to: watch carefully for other drivers; stop fully at stop signs; yield to the other motorist at stop signs and not drive trucks out in front of other motorists.

**COUNT I – NEGLIGENCE – WRONGFUL DEATH AGAINST DEFENDANT**

COMES NOW Plaintiff [REDACTED], individually, as Special Administrator, and as Personal Representative of the Estate of [REDACTED], deceased, and pursuant to 740 ILCS 180/1, the Illinois Wrongful Death Act, states the following for her cause of action against Defendant [REDACTED]:

12. Plaintiff adopts and incorporates the Allegations Applicable to All Counts as through fully set forth herein.

13. The death of Plaintiff [REDACTED] was the direct and proximate result of the negligence and carelessness of Defendant [REDACTED] in one or more of the following respects:

- a) Defendant failed to yield the right of way;
- b) Defendant failed to keep a careful lookout;
- c) Defendant failed to reduce speed to avoid collision in violation of Section 11-601(a) of the Illinois Vehicle Code, 625 ILCS 5/1-100 *et seq.*;
- d) Defendant failed to stop, swerve, or slow his truck in a manner to avoid the collision; and
- e) Defendant failed to stop at a stop sign located at intersection of Illinois Route 121 and Spitler Park Plaza in violation of Section 11-904(b) of Illinois Vehicle Code, 625 ILCS 5/1-100 *et seq.*

14. As a direct and proximate result of the negligence and carelessness of Defendant [REDACTED] described herein, Plaintiff [REDACTED] died.

15. Plaintiff requests all damages appropriate under 740 ILCS Section 180, *et seq.*

**WHEREFORE**, Plaintiff [REDACTED], individually, as Special Administrator, and as Personal Representative of the Estate of [REDACTED], deceased, prays for judgment against Defendant [REDACTED] for a sum in excess of the \$50,000.00 jurisdictional minimum of this court, to fully compensate her and [REDACTED] family for the death and loss of [REDACTED] pursuant to 740 ILCS Section 180, *et seq.*, plus costs, and for any further just and proper relief.

**COUNT II – NEGLIGENCE/RESPONDEAT SUPERIOR – WRONGFUL DEATH  
AGAINST DEFENDANT [REDACTED]**

COMES NOW Plaintiff [REDACTED], individually, as Special Administrator, and as Personal Representative of the Estate of [REDACTED], deceased, pursuant to 740 ILCS 180/1, the Illinois Wrongful Death Act, and states the following for her cause of action against [REDACTED]:

16. Plaintiff adopts and incorporates the Allegations Applicable to All Counts as through fully set forth herein.

17. The death of Plaintiff [REDACTED] was the direct and proximate result of the negligence and carelessness of Defendant [REDACTED], acting through its employee Defendant [REDACTED], in one or more of the following respects:

- a) Defendant [REDACTED] failed to yield the right of way;
- b) Defendant [REDACTED] failed to keep a careful lookout;

- c) Defendant [REDACTED] failed to reduce speed to avoid collision in violation of Section 11-601(a) of the Illinois Vehicle Code, 625 ILCS 5/1-100 *et seq.*;
- d) Defendant [REDACTED] failed to stop, swerve, or slow his truck in a manner to avoid the collision; and
- e) Defendant [REDACTED] failed to stop at a stop sign located at intersection of Illinois Route 121 and Spitler Park Plaza in violation of Section 11-904(b) of Illinois Vehicle Code, 625 ILCS 5/1-100 *et seq.*

18. As a direct and proximate result of the negligence and carelessness of Defendant [REDACTED] through its employee Defendant [REDACTED] described herein, Plaintiff [REDACTED] died.

19. Plaintiff requests all damages appropriate under 740 ILCS Section 180, *et seq.*

**WHEREFORE**, Plaintiff [REDACTED], individually, as Special Administrator, and as Personal Representative of the Estate of [REDACTED], deceased, prays for judgment against Defendant [REDACTED] for a sum in excess of the \$50,000.00 jurisdictional minimum of this court, to fully compensate her and [REDACTED] family for the death and loss of [REDACTED] pursuant to 740 ILCS Section 180, *et seq.*, plus costs, and for any further just and proper relief.

**COUNT III – NEGLIGENT HIRING – WRONGFUL DEATH AGAINST  
DEFENDANT [REDACTED]**

COMES NOW Plaintiff [REDACTED], individually, as Special Administrator, and as Personal Representative of the Estate of [REDACTED], deceased, pursuant to 740 ILCS 180/1, the Illinois Wrongful Death Act, and states the following for her cause of action against [REDACTED]:

20. Plaintiff adopts and incorporates the Allegations Applicable to All Counts as through fully set forth herein.

21. At all relevant times, Defendant [REDACTED] held itself out to the general public as a distributor for PepsiCo beverages and other PepsiCo products.

22. At all relevant time, Defendant [REDACTED] hired commercial drivers to operate their Pepsi semi-trucks in order to distribute PepsiCo beverages and other PepsiCo products.

23. Defendant [REDACTED] was on such commercial driver hired by Defendant [REDACTED].

24. At all relevant time, Defendant [REDACTED] had a duty to conduct its business with reasonable care.

25. Defendant [REDACTED] breached its duty of reasonable care and was negligent in one or more of the following acts and/or omissions:

- a. Hired Defendant [REDACTED] to operate a Pepsi semi-truck when it knew or should have known that Defendant [REDACTED] did not have

the knowledge, training, skill or experience to operate a Pepsi semi-truck safely;

b. Hired Defendant [REDACTED] without adequate investigation of his safety and competence record.

26. As a direct and proximate result of the negligence and carelessness of Defendant [REDACTED] through its employee Defendant [REDACTED] described herein, Plaintiff [REDACTED] died.

27. Plaintiff requests all damages appropriate under 740 ILCS Section 180, *et seq.*

**WHEREFORE**, Plaintiff [REDACTED], individually, as Special Administrator, and as Personal Representative of the Estate of [REDACTED], deceased prays for judgment against Defendant [REDACTED] for a sum in excess of the \$50,000.00 jurisdictional minimum of this court, to fully compensate her and [REDACTED] family for the death and loss of [REDACTED] pursuant to 740 ILCS Section 180, *et seq.*, plus costs, and for any further just and proper relief.

**COUNT IV – NEGLIGENT RETENTION – WRONGFUL DEATH AGAINST DEFENDANT [REDACTED]**

COMES NOW Plaintiff [REDACTED], individually, as Special Administrator, and as Personal Representative of the Estate of [REDACTED], deceased, pursuant to 740 ILCS 180/1, the Illinois Wrongful Death Act, and states the following for her cause of action against [REDACTED]:

28. Plaintiff adopts and incorporates the Allegations Applicable to All Counts as through fully set forth herein.

29. At all relevant times, Defendant [REDACTED] held itself out to the general public as a distributor for PepsiCo beverages and other PepsiCo products.

30. At all relevant time, Defendant [REDACTED] hired commercial drivers to operate their Pepsi semi-trucks in order to distribute PepsiCo beverages and other PepsiCo products.

31. Defendant [REDACTED] was on such commercial driver hired by Defendant [REDACTED].

32. At all relevant time, Defendant [REDACTED] had a duty to conduct its business with reasonable care.

33. Defendant [REDACTED] breached its duty of reasonable care and was negligent in one or more of the following acts and/or omissions:

a. Retained Defendant [REDACTED] to operate a Pepsi semi-truck when it knew or should have known that Defendant [REDACTED] did not have the knowledge training, skill or experience to operate a Pepsi semi-truck safely;

b. Retained Defendant [REDACTED] to operate a Pepsi semi-truck when it knew or should have known that Defendant [REDACTED] acted inappropriacy to customers and the public, had prior crashes, and did not operate Defendant [REDACTED] semi-truck safely;

c. Retained Defendant [REDACTED] without adequate or proper investigation and assessment of his safety and competence record after he started as an employee of Defendant.

34. As a direct and proximate result of the negligence and carelessness of Defendant [REDACTED] through its employee Defendant [REDACTED] described herein, Plaintiff [REDACTED] died.

35. Plaintiff requests all damages appropriate under 740 ILCS Section 180, *et seq.*

**WHEREFORE**, Plaintiff [REDACTED], individually, as Special Administrator, and as Personal Representative of the Estate of [REDACTED], deceased prays for judgment against Defendant [REDACTED] for a sum in excess of the \$50,000.00 jurisdictional minimum of this court, to fully compensate her and [REDACTED] family for the death and loss of [REDACTED] pursuant to 740 ILCS Section 180, *et seq.*, plus costs, and for any further just and proper relief.

**COUNT V– NEGLIGENT SUPERVISION/TRAINING – WRONGFUL DEATH  
AGAINST DEFENDANT [REDACTED]**

COMES NOW Plaintiff [REDACTED], individually, as Special Administrator, and as Personal Representative of the Estate of [REDACTED], deceased, pursuant to 740 ILCS 180/1, the Illinois Wrongful Death Act, and states the following for her cause of action against [REDACTED]:

36. Plaintiff adopts and incorporates the Allegations Applicable to All Counts as through fully set forth herein.

37. At all relevant times, Defendant [REDACTED] held itself out to the general public as a distributor for PepsiCo beverages and other PepsiCo products.

38. At all relevant times, Defendant [REDACTED] hired commercial drivers to operate their Pepsi semi-truck in order to distribute PepsiCo beverages and other PepsiCo products.

39. Defendant [REDACTED] was one such driver hired by Defendant [REDACTED].

40. At all relevant times, Defendant [REDACTED] had a duty to conduct its business with reasonable care.

41. Defendant [REDACTED] breached its duty of reasonable care and was negligent in one or more of the following acts and/or omissions:

- a. Failed to supervise or train Defendant [REDACTED] to ensure compliance with driver duties and applicable traffic laws;
- b. Failed to supervise or train Defendant [REDACTED] to ensure that he used the same care and caution that a reasonably prudent person or semi-truck operator would have exercised under the same or substantially the same circumstances;
- c. Failed to impose sufficient employee supervision or discipline to ensure he used the same care and caution and obeyed traffic rules that a reason prudent person would use under the same or substantially similar circumstances or terminate his employment;
- d. Failed to institute reasonable driver training and/or policies to ensure compliance with safe driving practices;

e. Failed to comply with reasonable driver training or policies in existence;

f. Failure to heed warnings of Defendants employees about [REDACTED] or properly address prior traffic violations, crashed and improper conduct of [REDACTED] to better supervise, train or terminate [REDACTED] employment.

42. As a direct and proximate result of the negligence and carelessness of Defendant [REDACTED] through its employee Defendant [REDACTED] described herein, Plaintiff [REDACTED] died.

43. Plaintiff requests all damages appropriate under 740 ILCS Section 180, *et seq.*

**WHEREFORE**, Plaintiff [REDACTED], individually, as Special Administrator, and as Personal Representative of the Estate of [REDACTED], deceased prays for judgment against Defendant [REDACTED] for a sum in excess of the \$50,000.00 jurisdictional minimum of this court, to fully compensate her and [REDACTED] family for the death and loss of [REDACTED] pursuant to 740 ILCS Section 180, *et seq.*, plus costs, and for any further just and proper relief.

**COUNT VI – SURVIVAL ACT CLAIM AGAINST DEFENDANT [REDACTED]**

COMES NOW Plaintiff [REDACTED], individually, as Special Administrator, and as Personal Representative of the Estate of [REDACTED], deceased, pursuant to 755 ILCS 5/27-6, and states the following for her cause of action against Defendant [REDACTED]:

44. Plaintiff adopts and incorporates Paragraphs 1 through 15 of her Complaint as through fully set forth herein.

45. Plaintiff was appointed the personal representative of the estate of [REDACTED], deceased, by the Circuit Court of Macon County, Illinois, and qualified for the office. Plaintiff is personal representative of the estate, and brings this action as personal representative pursuant to and as authorized by 755 ILCS 5/27-6, commonly known as the Illinois Survival Act.

46. The deceased is survived by [REDACTED], surviving spouse, and [REDACTED], minor child, the only next of kin.

47. The death of Plaintiff [REDACTED] on July 12, 2019, was the direct and proximate result of the negligence and carelessness of Defendant [REDACTED] in one or more of the following respects:

- a) Defendant failed to yield the right of way;
- b) Defendant failed to keep a careful lookout;
- c) Defendant failed to reduce speed to avoid collision in violation of Section 11-601(a) of the Illinois Vehicle Code, 625 ILCS 5/1-100 *et seq.*;
- d) Defendant failed to stop, swerve, or slow his truck in a manner to avoid the collision; and
- e) Defendant failed to stop at a stop sign located at intersection of Illinois Route 121 and Spitler Park Plaza in violation of Section 11-904(b) of Illinois Vehicle Code, 625 ILCS 5/1-100 *et seq.*

48. As a direct and proximate result of one or more of these negligent acts and omissions described herein, [REDACTED] suffered serious injuries which caused his

death on July 12, 2019, together with injuries of a personal and pecuniary nature, including but not limited to disability and disfigurement, medical expenses, lost income, and pain and suffering, and which would have permitted [REDACTED] to bring an action had he survived, and his right to bring such an action survives him.

**WHEREFORE**, Plaintiff [REDACTED], individually, as Special Administrator, and as Personal Representative of the Estate of [REDACTED], deceased, prays for judgment against Defendant [REDACTED] for a sum in excess of the \$50,000.00 jurisdictional minimum of this court, to fully compensate her and [REDACTED] family for the death and loss of [REDACTED] pursuant to 740 ILCS Section 180, *et seq.*, plus costs, and for any further just and proper relief.

**COUNT VII – FAMILY EXPENSE ACT – NEGLIGENCE AGAINST DEFENDANT**

[REDACTED]  
COMES NOW Plaintiff [REDACTED], individually, as Special Administrator, and as Personal Representative of the Estate of [REDACTED], deceased, and states the following for her cause of action against Defendant [REDACTED]:

49. Plaintiff adopts and incorporates Paragraphs 1 through 15 and 44 through 48 of her Complaint as through fully set forth herein.

50. As a direct and proximate result of one or more of these negligent acts and omissions described herein, [REDACTED] suffered serious injuries which caused his death on July 12, 2019.

51. As a result, thereof, Plaintiff, individually and as next-of-kin of [REDACTED], deceased, sustained losses in the form of medical, funeral, and burial expenses.

**WHEREFORE**, Plaintiff [REDACTED], individually, as Special Administrator, and as Personal Representative of the Estate of [REDACTED], deceased, prays for judgment against Defendant [REDACTED] for a sum in excess of the \$50,000.00 jurisdictional minimum of this court, to fully compensate her and [REDACTED] family for the death and loss of [REDACTED] pursuant to 750 ILCS 65/15 *seq.*, plus costs, and for any further just and proper relief.

**COUNT VIII – SURVIVAL ACT CLAIM AGAINST DEFENDANT**  
[REDACTED]

COMES NOW Plaintiff [REDACTED], individually, as Special Administrator, and as Personal Representative of the Estate of [REDACTED], deceased, pursuant to 755 ILCS 5/27-6, and states the following for her cause of action against Defendant [REDACTED]:

52. Plaintiff adopts and incorporates Paragraphs 1 through 51 of her Complaint as through fully set forth herein.

53. Plaintiff was appointed the personal representative of the estate of [REDACTED], deceased, by the Circuit Court of Macon County, Illinois, and qualified for the office. Plaintiff is personal representative of the estate, and brings this action as personal representative pursuant to and as authorized by 755 ILCS 5/27-6, commonly known as the Illinois Survival Act.

54. The deceased is survived by [REDACTED], surviving spouse, and [REDACTED], minor child, the only next of kin.

55. The death of Plaintiff [REDACTED] on July 12, 2019, was the direct and proximate result of the negligence and carelessness of [REDACTED] as set

forth in Counts II through V, adopted and incorporated by reference as though fully set forth herein

56. As a direct and proximate result of one or more of these negligent acts and omissions described herein, [REDACTED] suffered serious injuries which caused his death on July 12, 2019, together with injuries of a personal and pecuniary nature, including but not limited to disability and disfigurement, medical expenses, lost income, and pain and suffering, and which would have permitted [REDACTED] to bring an action had he survived, and his right to bring such an action survives him.

**WHEREFORE**, Plaintiff [REDACTED], individually, as Special Administrator, and as Personal Representative of the Estate of [REDACTED], deceased, prays for judgment against Defendant [REDACTED] for a sum in excess of the \$50,000.00 jurisdictional minimum of this court, to fully compensate her and [REDACTED] family for the death and loss of [REDACTED] pursuant to 740 ILCS Section 180, *et seq.*, plus costs, and for any further just and proper relief.

**COUNT IX – FAMILY EXPENSE ACT – NEGLIGENCE AGAINST DEFENDANT**

[REDACTED]  
COMES NOW Plaintiff [REDACTED], individually, as Special Administrator, and as Personal Representative of the Estate of [REDACTED], deceased, pursuant to and states the following for her cause of action against Defendant [REDACTED]:

57. Plaintiff adopts and incorporates Paragraphs 1 through 56 of her Complaint as through fully set forth herein.

58. As a direct and proximate result of one or more of these negligent acts and omissions described herein committed by Defendant [REDACTED], [REDACTED] suffered serious injuries which caused his death on July 12, 2019.

59. As a result thereof, Plaintiff, individually and as next-of-kin of [REDACTED], deceased, sustained losses in the form of medical, funeral, and burial expenses.

**WHEREFORE**, Plaintiff [REDACTED], individually, as Special Administrator, and as Personal Representative of the Estate of [REDACTED], deceased, prays for judgment against Defendant [REDACTED] for a sum in excess of the \$50,000.00 jurisdictional minimum of this court, to fully compensate her and [REDACTED] family for the death and loss of [REDACTED] pursuant to 750 ILCS 65/15 *seq.*, plus costs, and for any further just and proper relief.

Respectfully submitted,

**BURGER LAW, LLC**

---

Gary K. Burger, Jr. #6212156  
500 N Broadway Ste #1860  
St. Louis, MO 63102  
(314) 542-2222  
(314)542-2229  
[gary@burgerlaw.com](mailto:gary@burgerlaw.com)