



10 MISTAKES THAT WRECK YOUR CAR CRASH CASE

(AND HOW TO AVOID THEM)

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INTRODUCTION AND THE BASICS

Car crashes occur daily in Missouri and Illinois, and throughout the United States. We see them on TV, read about them in news apps and in social media. We all have stories about them. If you are reading this book you have probably been involved in one. I wrote this book to provide a guide for how to handle your car accident claim. It is written in the negative – about mistakes people make – to get your attention and avoid pitfalls I have seen hundreds of others make.

Drivers who violate safety rules injure and kill people. People who have driven for years or decades sometimes forget about the importance of safety rules while driving. We are all trained to follow the Rules of the Road and to operate motor vehicles safely. However, when that doesn't occur, fathers, mothers, and children are easily injured. Typically, the rule violations are excessive speed, failure to keep a careful lookout, failure to yield the right of way and violations of traffic signals (set out in MAI 17.01 et seq.). Missouri drivers must use the "highest degree of care" or what "a very careful person" would do under the same circumstances (MAI 11.01).

In 2013, 757 people were killed in Missouri traffic accidents. Despite safety laws requiring them, only 80% of Missourians wear seatbelts. As a result, 6 out of 10 vehicle occupants killed in Missouri traffic accidents in 2013 were unbuckled. Further, despite impaired driving laws, 30% of Missouri traffic fatalities in 2013 involved a substance impaired driver. The leading cause of fatal car crashes, other than substance impairment, is speeding and improper lane usage. And – don't drive inTEXTicated!

In the United States:

- Over 37,000 people die in road crashes each year
- An additional 2.35 million are injured or disabled
- Over 1,600 children under 15 years of age die each year
- Nearly 8,000 people are killed in crashes involving drivers 16-20
- Road crashes cost the U.S. \$230.6 billion per year, or an average of \$820 per person
- 3 million accident claims per year

A car driving 55 mph travels 81 feet in 1 second. In 3 seconds, such a car travels 243 feet. The Illinois Rules of the Road require that a driver “slow down when approaching and crossing an intersection, going around a curve, approaching the top of a hill or traveling on a narrow or winding roadway.” It insists that “drivers must be aware that there may always be dangers present due to pedestrians, traffic, weather, mechanical problems, or road conditions.” Drivers should “always be prepared to react to another driver.” Driving defensively — do not assume that you know what the other driver is going to do. View the [Missouri](#) and [Illinois](#) Rules of the Road for many other rules and guidelines about driving.

The phenomena of road rage and aggressive driving is ridiculous. How silly is it for us to get mad that a vehicle is driving too slow, or that we have to go around a car, or that a bicycle is on the roadway and we have to spend a little energy going around them. When road rage happens, drivers act unsafe and violate the rules of the road. It adds to stress.

When you are in a car accident, you only have a claim for personal injuries if the other 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 other 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. Typically, people have high loans on vehicles and insurance companies pay wholesale or other reduced costs to pay for property damage.

Make sure you get all your medical care quickly and thoroughly after the car 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. The guide below tells you how to differentiate between the size/importance of the claim and how to choose the right lawyer for your case. 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 should assist you with resolving your small car accident claim yourself without the need for a lawyer to be involved. My lawyer brethren may not like this, but I often tell folks with only an ER visit or a couple doctor or chiropractor visits to settle their claims themselves. A lawyer like me only adds value to cases where the injuries, medical treatment and damages are more serious. You can resolve your property damage claim, get full payment to repair

your car or get a new vehicle. If you get basic medical attention after a car crash and are completely healed from that treatment, you can provide the medical bills and records to the insurance claim representatives to get payment for pain and suffering and resolve the claim yourself. Only if your injuries exceed this basic medical treatment do you need an experienced and qualified lawyer to assist you.

FIRST MISTAKE: THEY DO NOT ACT IMMEDIATELY AFTER THE CRASH

What do you do after you are in a car crash? It is an unsettling event, surprising, scary and painful. Often people are in shock. Here are the straightforward steps you should take after a car crash:

1. Make sure your **car 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 other 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 other driver's license and insurance card to write the information down yourself. Don't trust what they say.

Talk to the other driver about their conduct prior to the accident. Be nice, but ask what they did wrong.

If it is the other 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 almost every auto 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.

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.

SECOND MISTAKE: THEY DO NOT GET MEDICAL ATTENTION SOON AFTER THE CRASH

Real injuries require real medical attention. With bone breaks, spinal cord injuries, head trauma, bleeding and acute neurological problems, it is obvious medical attention is necessary right away. But often, even if a person walks away from an accident they hurt a lot later.

If you are acutely injured after a 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 car,” “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 car 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 have unique abilities to treat people after

car 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 or neurologist or other 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 car 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.

Often, you are not 100% after you receive treatment and may have a residual disability or disfigurement. Any treatment can only last until you are at your maximum medical improvement. But people have lasting symptoms--pain, lack of mobility, loss of function, lack of ability to do things, incapacity to work at full potential, and other disabilities. These are part of damages.

THIRD MISTAKE: THEY TRUST THE INSURANCE COMPANY TOO MUCH FOR TOO LONG

Do not give a recorded statement. That is only going to be used against you later. Do not sign a release or other document regarding your rights without consulting an attorney. Do not trust the insurance company's representation of the scope of insurance coverage if it constrains or limits coverage. Do not sign or negotiate your claim while on medication or while still recovering from your injuries. Do not assume the insurance company will be fair with you. Discretion is the better part of valor. Verify everything.

To be sure, there are good and reputable insurance companies and honest and fair adjusters. But I often say that insurance companies are the best source of business for injury lawyers because some of these companies can systematically rip people off and be unfair to them. I have many stories of people who did not want to go to a lawyer and wanted to handle their claim themselves.

But after talking with the insurance company, giving recorded statements, providing full documentation of medical records and authorization, giving photos, etc., and waiting for months and months, the insurance claim representative turns around and offers a nominal amount that doesn't even cover medical bills. The claimant (person injured because of the wrongful acts of another) is a year out from their auto accident and has nothing to show for it because they thought the insurance company was going to be fair.

Bad insurance companies are in the business of taking premiums and denying claims. They have no legal duty to be fair to you; they often protect their interest and not yours. There are many instances of insurance companies acting improperly. Attached as appendices are blogs that I have written about this issue. I have had many occasions to represent good, hard working people, file suit, litigate cases, take depositions, take video depositions of doctors, and then either try the case to get a fair result or have the case settle on the eve of trial. The conduct of insurance companies is ridiculous. They will callously deny liability on a clear rear end auto accident with extensive property damage and never pay. They will deny liability until the opening statement at trial when all of the sudden, they admit they were negligent and they caused damages. This is their technique to try to surprise you and gain sympathy with the jury. I can list 20 other ways the insurance companies try to rip off consumers – misrepresent amount of insurance; say uninsured coverage does not apply when it does; deny coverage of clearly related medical treatment; create arbitrary timetables of coverage and deny medical after that; say you were at fault and recovery is reduced when that is untrue; saying they 'arbitrated' the claim with another insurance company and are reducing recovery; saying your medical condition is degenerative when it isn't

or is irrelevant; only paying for a certain number of physical therapy visits; saying your medical insurance precludes covering medical bills; saying they only will pay medical bills and not pain and suffering; saying wage loss damages cannot be verified; saying there was too low an impact to justify medical damages, etc (is that 20? – if not go to our website for many more crazy stories).

The fact is that people don't know the claims handling process and it is difficult to know what to do or what is fair. You want to trust your insurance company because you have been paying premiums to them for 20 years, but they may not have your best interest in mind.

FOURTH MISTAKE: THEY DO NOT GET A LAWYER THAT WILL GET THE FULL VALUE OF THEIR CLAIM

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? Or 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 like mine before?

Here are a number of additional questions:

- 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?
- Do I even need a lawyer? Is my case so small because I don't 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 do that without having to pay you?
- Can you really add value to my case even if it is a smaller case?
- Is this is serious enough injury where I should get a lawyer?
- Does this lawyer have the right experience and resources?

- How is your firm's track record?
- What kind of reputation do you have?
- Do you feel comfortable with this lawyer?
- Do you have any certifications or peer awards?
- Is the lawyer trying to hard sell you or is it obvious that they are a robust business and having them as a teammate to fight your claim would be beneficial?
- 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 its weaknesses?
- What is the likely outcome of my case and what should I do?

FIFTH MISTAKE: THEY DO NOT TRY TO SETTLE A SMALL CLAIM WITH THE INSURANCE COMPANY QUICKLY BY THEMSELVES

Although a little counterintuitive, one of the mistakes people make is they do not try to settle small cases themselves. Yes, as said in Mistake Three, do not trust the insurance company, and yes, get a good lawyer as said in Mistake Four.

But, if you have a small, clear liability case and have an ER visit or an ER visit with a little primary care follow up, you likely do not need a lawyer.

Here is what you should do if you want to try to resolve your own case. Be courteous and kind to the insurance claim representative and advise them of what happened (but no recorded statement – they can take notes and it is not complicated). Tell them how you were rear ended or the other driver violated the light signal or why the other driver is at fault. Most lawyers will tell you not to give a recorded statement and that is generally true. However, if you have a small claim, you are uninjured, you are not going to get any medical records, and you want to quickly handle it yourself - go ahead and give a simple recorded statement. It is not going to hurt you- just make sure that you tell the agent that the other person was at fault and how they were at fault. Organize your thoughts and write them down beforehand.

In trying to settle your case, provide all your medical records and bills to the insurance company. Provide to them photos and any other material that is relevant. Have them pay the full price of the medical or the reduced price that your insurance paid. Do not let the defendant's insurance get any benefit because your health insurance paid the medical. This is a source collateral to the defendant and one that they should not get the advantage of. You are the one that paid insurance premiums, so you get that benefit. Have the insurance company pay the full price of all the medical bills that were paid--not necessarily what was billed, but what was *paid*--and then add a reasonable amount for your pain and suffering.

Make sure your property damage, rental car, and any other charges are paid. If you have wage loss damages from missing work, provide copies of pay stubs to show what you are making in the hours you missed. Advise them of any miscellaneous damages like a broken phone or lost property.

If the insurance company is offering a quick and fair settlement in a relatively small injury case, settle it. But make sure your entire medical treatment is completed and you are not going to get any worse or have any additional medical treatment. You do not want to settle a case and need further unknown medical care or additional uncompensated damage. I advise folks in such circumstances to add some for pain and suffering and settle their case. A lawyer like me cannot add value to that case and you will put more money in your pocket without me and my fee.

In negotiating with the insurance company, be polite. Kill them with kindness and be sweet. Be professional, non-argumentative and direct. Send things by paper or email and document your interactions. Follow up on matters and don't let things delay too long. Give reasonable time for claim representatives to review material, as you are not their only claim, but then follow up in a courteous manner. Establish a rapport and a goal to resolve and settle this claim with the claim representative. Don't give outlandish monetary demands. Once you settle the claim, you can sign a release which releases your rights. But read it carefully and make sure you are not still injured and being undercompensated.

Make sure they pay your settlement. You want to make sure you are the only one on the check and they are not paying your other medical providers. You also want to make sure they are not paying any other money to med pay or any

other “lien holders.” A lien holder is any person or entity that might have a legal claim or lien on the settlement monies you are getting. The cases where you should settle yourself are ones where fault is clear, you are not injured or if you were injured your injuries have healed fully and relatively soon after the accident, and the amount of the total claim is relatively low. Remember you do not have to accept what the insurance company offers. You can negotiate higher. If the insurance company starts saying they are not going to pay you adequately or that it is your fault or playing games with you, that is the time where you want to talk to a lawyer. Never settle a claim at the scene of the accident or before you know the full extent of what your damages are. Remember that if the other driver doesn’t have insurance, you can still make an uninsured claim against your own insurance company and get fully paid.

Some other mistakes people make when trying to resolve their claim directly with the claims adjustor is getting argumentative and establishing an adversarial relationship with the claim agent. You can be firm and resolute, but be nice and kind at the same time. Claim representatives have a lot of authority and discretion in handling claims. If they like you, they might pay you more. If you are a jerk, they are not as inclined to do you a favor and may not pay you as much as they would otherwise for your property damage claim, small personal injury claim, med pay, etc. Another thing people do is failing to provide adequate documentation. You need to provide medical bills, a medical authorization so they can verify the bills, medical records, witness statements, pictures, etc. If the claims agent refuses to pay you because they think it’s a low speed impact, and you have photos showing tremendous property damage, provide those photos to them. If you have medical records showing severe injuries that would warrant a

much higher settlement, you should provide those records. Although you would not normally want to provide anybody all of your medical records, if you are going to make a claim for personal injuries, you put your personal health at issue. So, many times you will be expected to provide medical authorizations to enable the claims representative to get all of your medical records and bills. This is normal. You can provide authorization and request copies of the records and that they will be destroyed when the claim is resolved.

SIXTH MISTAKE: THEY SETTLE BEFORE THEY KNOW THE FULL EXTENT OF THEIR INJURIES

Don't settle your claim before you know the full extent of your injuries. If you ever settle your claim and sign a release, **you fully and finally settle and release your claim.** You can never recover any more money. Releases contain language that you are fully and finally settling and completely resolving your claim for all injuries from the car 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 disability. Maybe the worst mistake that a car accident victim or their lawyer can make is to settle a case and then discover that the injured party needs surgery a month later.

Many times back or neck problems linger for a long period of time and it's 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.

SEVENTH MISTAKE: THEY DO NOT HAVE ANY OR ENOUGH CAR INSURANCE

Drivers sometimes do not have car insurance or don't have enough car insurance. Missouri and Illinois mandate every driver have insurance. The Missouri minimum of coverage for liability insurance (for when your negligence injures someone else) is \$25,000 and in Illinois it is also \$25,000. Make sure you get car insurance with at least this minimum coverage. We all know that **it is a misdemeanor to drive without minimum insurance**. Missouri's minimum insurance is 25/50/10 - \$25,000 per person, \$50,000 per accident and \$10,000 in property damage. Illinois's minimum insurance is 25/50/20 - \$25,000 per person, \$50,000 per accident and \$20,000 in property damage. Further – get more than the minimum insurance. It is relatively cheap and injuries and damages often exceed this minimum. If another driver injures you or one of your passengers, their insurance should cover your claim. That is why your claim is against them and their insurance company. Go to www.mo.dor.gov for more insurance information in Missouri and www.insurance2.illinois.gov for Illinois.

Having liability insurance is especially important in Missouri if you are injured and want to make a claim against the negligent driver. Missouri law now prohibits recovery for pain and suffering damage by a car crash for a victim if that person was driving and had no liability insurance. All an uninsured driver can

recover is medical bills and wage loss damages. Make sure you have insurance and pay your premium so it is not cancelled.

You are also mandated to have uninsured motorist coverage. Uninsured motorist coverage occurs when another driver injures you or a passenger and they did not have insurance. Yes, they violated the law and they ought to get a ticket for not having insurance, but you are still left uncompensated with no recourse. So, you have uninsured motorist coverage with your insurance. You can make a claim against your own insurance company for your personal injuries even though another person, and not you, caused those injuries. Uninsured motorist coverage is very powerful, and a lot of lawyers don't understand it. Did you know that if a driver hits and injures you and flees the scene, or a phantom vehicle injures you, you have an uninsured claim? All uninsured coverage in Missouri and Illinois must cover you if there is a hit and run driver or if the driver is unknown and cannot be located. Uninsured motorist coverage also covers you if someone steals a vehicle and then injures you. We have had many examples in my law practice of this occurring. Further, in Missouri uninsured motorist coverage can be stacked. This means that if you own 2 or 3 vehicles and an uninsured driver hits you, you can stack your \$25,000 uninsured coverage to get more insurance.

You also might have underinsured motorist coverage. This comes into play when another driver has minimal insurance and your damages are large. For instance, if you have \$100,000 underinsured coverage, and the driver that hit and injured you only has \$25,000, you can make a claim against your own insurance for your underinsured motorist coverage. You also might have personal injury protection insurance, which often occurs when you rent a vehicle. This is

additional coverage you can obtain when you rent a car that will protect you specifically for personal injuries. You might also have medical payments or med pay coverage. This is usually a smaller amount, under \$10,000, that you have on your insurance policy to pay for medical care resulting from a car accident. It is strongly recommended you use your own health insurance, and the med pay should pay your co-pays or deductibles. Sometimes health providers try to make you use your med pay rather than using your health insurance because they want to make more money. However, you should always insist on using your health insurance coverage and making that med pay claim later. This is a complicated area in which some lawyers are well versed. Sometimes people have liability only insurance which does not cover their own property damage. This only protects if you are negligent and you injure someone else. Note that under Missouri and Illinois law even if you have liability only coverage, you have to have uninsured motorist coverage as well.

EIGHTH MISTAKE: THEY IGNORE TIME LIMITS AND DO NOT ACT QUICKLY ON THEIR CLAIM

Another mistake people make is ignoring time limits and not acting rapidly on their claim. Justice delayed is justice denied. If you do not contact the insurance company and advise them of the incident and claim, if you do not get medical attention, if you do not act quickly to pursue your claim, your case will be damaged. 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 other 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 collision is important. We have investigators and experts that can go 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 claims. Missouri has a five year Statute of Limitations for personal injury claims (car 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.

NINTH MISTAKE: THEY DO NOT MAKE UNINSURED OR UNDERINSURED MOTORIST CLAIMS OR CLAIMS AGAINST INSURANCE BOUGHT BY FRIENDS AND FAMILY

People are reluctant to pursue claims against family members and their own insurance. But if a family member breaks the Rules of the Road and injures you, their insurance ought to compensate you for the damage caused. Insurance

should take care of family over strangers. This is a claim against insurance and not against personal assets. Why should the injury victim be stuck solely responsible for the damage? Further, this reluctance only benefits the insurance company – not you or your family. Let's turn to two areas that are not well understood: uninsured 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 an automobile 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.

Uninsured coverage applies in a wide variety of situations. If there is a hit and run or phantom driver, your uninsured coverage applies. If your car is struck by a 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 car 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 maybe 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 cars 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 vehicle 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 damaged (or killed) in automobile or truck crashes where the

defendant has no insurance. 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 automobile 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 car or hit you while you were walking only had \$25,000 in insurance coverage, you are underinsured for \$75,000. 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 may 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 lots of 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 and 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.

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 appendix for unique insurance article.

TENTH MISTAKE: THEY MAKE INCONSISTENT STATEMENTS ABOUT THEIR CASE AND/OR POST ON SOCIAL MEDIA ABOUT THEIR CLAIM

Another mistake people can make is social media posting about an incident. In every lawsuit we file all of 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 car 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.

APPENDIX I: BLOGS ON CAR CRASH SUBJECTS FROM BURGERLAW.COM

Please go to <http://burgerlaw.com/blog/> for more blogs.

\$5 Million for Child of Man Killed in Truck Crash

Posted on Oct 29, 2014 By [Gary Burger](#)

This tractor trailer-SUV crash occurred in the early morning of June 15, 2013. A fully loaded tractor trailer traveling south on Broadway crashed into our decedent's SUV at an intersection. The crash pushed the SUV a great distance and caused the tractor trailer to overturn and slide along and off the roadway. The engine actually separated from the tractor cab and the trailer's load of Budweiser products was strewn all over the roadway. Residential property in the area was severely damaged.

Drivers of both vehicles died in the accident. Gary filed suit right away and also investigated the case by hiring accident reconstruction experts. Through investigation, we identified post impact witnesses who heard the impact, looked up and saw that the northbound Broadway light was red. This strongly indicated that the southbound tractor trailer had violated the light at the intersection. Attempts to get video from the intersection proved fruitless. The skid marks on the road indicated that the tractor trailer was slightly into the left hand turn lane and slightly over the center line at the point of impact with the deceased plaintiff's vehicle. We worked hard to investigate the case; and our expert determined the forces involved in the accident and concluded the truck was speeding at the time of the impact going 47-49 miles per hour. No one alive witnessed the impact but the post impact witnesses also suggested the tractor trailer was exceeding the speed limit.

When we filed the lawsuit, we requested a defendant ad litem be named for the deceased truck driver. After the case was filed, the defendants removed the case to Federal Court as there was complete diversity of citizenship between parties. Then, in a separate action, we petitioned to have an estate opened in Jefferson County, Missouri for the deceased truck driver. After service and notice, the public administrator was

appointed as the personal representative of the estate. Plaintiff successfully substituted the estate of the deceased truck driver as the party defendant instead of the defendant ad litem in Federal Court. This destroyed diversity and we filed a Motion to Remand the case to state court, where it belonged. These actions were strongly opposed by the defendants.

We were determined to get a great result for the family, but the case did not settle at mediation. Eventually, we were able to settle the case for 5 million dollars. The Court approved the settlement. We put the funds in a structured settlement to benefit the minor child of the deceased and also opened a separate conservatorship so that the funds can be monitored by the Court. All told, four separate probate cases were needed to resolve this case.

Personal Injury Compensation Explained

Posted on Dec 22, 2015 By [Gary Burger](#)

When someone is injured or killed in an accident, we demand that they receive full compensation for all of the harms and losses that they have suffered or their family suffered. I'm Gary Burger and this is my firm Burger Law.

Injury Due to Negligence

This goes back thousands of years both in our culture and in every religion on the planet. If someone, a person or a business, violates a safety rule in our community – if they go through a red light, if they are speeding, if they act carelessly while driving, if they are not keeping a proper lookout, a truck driver is too tired or he violates a rule, or a landowner has a dangerous condition of their property, or a lawyer or doctor does something wrong – whenever these societal rules that we have are broken and it causes damages to someone, the word “justice” means that those scales are balanced.

What it Means to Balance the Scales of Justice

And when you balance those scales, you don't partially balance those scales. You don't say “Hey, I have a personal view that pain and suffering damages should not be awarded, so I am only going to pay 80 percent of their damages. Or I don't think wage loss damages or future medical or other components...” No, that is not how that works.

If you work a 40 hour work week and your employer comes in at the end of the week and says, "You know what? I know I owe you your paycheck. I am only going to pay you for 30 hours this week because I have a personal or philosophical view point that you should only get 30 hours a week or 75 percent of your damages." That is now how it works.

So when I am trying cases and we are presenting claims to insurance companies, to truck companies, to corporations, to whatever entity we are pursuing a claim against, (and the person we are pursuing the claim against is the one who violated the rule, the safety rule that is meant to keep all of us safe, whether it is kids or adults or whoever,) when we pursue those claims, we insist on full compensation. Not "let's not pay because the person had a back treatment before." We don't say, "Hey We are not going to give you 100 percent because I don't believe in pain and suffering."

Types of Damages in a Personal Injury Case

So let me talk to you about your components of damages. That is the idea and that is what we try to tell jurors and claims adjusters and corporations to ensure that. And we insist on that. The reason I do what I do is not to get 75 percent compensation for my clients, but to get 100 percent.

Let me show you a chart that I did for a recent trial and give you an example of some of the damages. So, when we talk about damages, you have certain categories of damages. You have the past neck pain and injury that this client sustained. You have the future neck pain that she had. And that pain and suffering can vary.

The question is how bad is that pain? How long has it or will it last in the future? And how interfering is it? It can be really bad but last for a second and then not interfere with her anymore. It can be medium but it can be permanent pain and the person will have neck pain for the rest of her life. And interfering, it can interfere greatly and the person can be in a wheelchair for the rest of their life and be paralyzed, or it can only interfere a lot and the grandma can't lift the grandkids as much. So these ranges and these categories are how we teach jurors and how the law teaches jurors and how jury instructions and the law teaches jurors to assess these different elements of damages.

And that mostly goes for the **pain and suffering**. How much does it hurt? How long does it hurt? How bad is the hurt? How often does it happen? In the beginning did it happen every day and then later it happens once a week, or is this a permanent pain condition for which injections, pain medication or physical therapy is needed? Future

neck pain: we take depositions of doctors and get evidence from the family about how much this happened in the past and is going to happen in the future.

Disability is a separate idea. Disability in law is the idea of how much are you physically unable to do what you used to be able to do. You can't throw a baseball or play the piano because of an arm injury. You can't walk around the block and spend time with your children and do the physical activities you used to do because you have a permanent limp condition because you injured your pelvis, knee, ankle or foot. So that is a disability idea that is separate from pain and suffering and that can be passed into the future.

Disfigurement means that you have a scar and that affects you. We have folks who have scars from dog bites on their face or from auto accidents or whatever or on their hands or somewhere visible. Sometimes a scar isn't going to be that material or that significant, but sometimes it really is. We can also ameliorate or address those damages by having someone go to a plastic surgeon. Sometimes those scars can be filled in or taken down. Future medical is always a component to that – medical damages, expenses and future medical expenses.

You can also have a category of damages of **wage loss**. You can have past wage loss and future wage loss. In the future, your wage loss is often calculated with an expert. We hire economists and invoke rehab experts to come in and say how much you could have been making had the accident not happened, how much you are making now and reduce that amount to present value to give the jury an element of damages.

In **wrongful death cases**, it is different. We hire economists to show how much the deceased family member would have provided to the family in the future and you take it out through their work life expectancy and reduce that amount to present value and that is the number we give to the jury. We are always very accurate and we try not to exaggerate these numbers so that the jury gets the credibility and understand that this is only meant to fully compensate, not to excess compensate, but then again under compensating is not appropriate.

There are other elements of damages depending on the case. If you call me, I am always happy to talk with you about it. You can have disfigurement as I mentioned. You can have teeth pain. This happened to have this in this case. And in Illinois – we try cases in different states and different states have different ways of describing damages in the jury instructions – they talk about **life changes** and how much an accident affects your life. And that kind of can go into disability and transcend a couple of areas but in Illinois that is a separate area.

So regardless of the category of damages that you have – wage loss damages, medical damages, pain and suffering damages, life change damages, disability, disfigurement, all of these elements – we don't duplicate or double dip into these areas, but we do try to present these areas so that juries, and the claim agent, and the truck company, or the guy that hit your, or the land owner, or whoever it is understands and they get the harm. There is no burden easier than another man's troubles. What we try to do to fight that idea is to really get the jury to understand and walk in your shoes and be empathetic to what an injury victim suffers. We work hard on that and we would do that for you. If you have any questions, call me. Thanks.

Settling Auto Accident Cases Before Trial

Posted on Sep 11, 2014 By [Gary Burger](#)



I settled three auto accident cases this summer that are similar. In each case, an older (over 50) person was rear ended in an [automobile accident](#) causing whiplash injury. Each had neck surgery.

The surgeries are designed to repair herniated discs in the cervical spine. These can be pain producing, debilitating, and can cause referred pain numbness and tingling in arms. Metal cages and screws are put in the vertebrae and the disk is removed and cleaned out so the central nerve is no longer impinged by the disk.

Some of the clients in these cases had prior neck problems. Settlement amounts differ depending on how much money fairly compensates the client– or equalizes their damages – based on the different types of prior problems they had with their neck. Although all were asymptomatic prior to their accidents, x-rays and MRI's can reveal

degenerative changes in the neck causing some medical doctors and some juries to believe that the medical is not related.

We believe the medical was related in these cases and were able to prove it. Further, each had differences in timing of treatment, recovery, and continued problems. I worked with my clients to litigate these cases up until trial to ensure their fair recovery.

I settled a case for Patricia against the Missouri Highway Department for \$305,000. She was on a road in southern Missouri and had slowed down when a MODOT vehicle backed up on the roadway to pick up trash and hit her car. Although the property damage was small, Patricia's injuries were not. She went to different doctors for some time and eventually had neck surgery by a great doctor in Springfield, IL. We filed suit, vigorously litigated the case, and took depositions of physicians and prepared her case for trial. The case settled within 10 days of trial. I am happy the client is happy.

We settled Darrel's case within 10 days of trial as well. He had been rear-ended in St. Louis County, a suit was filed and we litigated the case. Darrel was produced a couple of times for deposition, we deposed all of his medical physicians by video and deposed the defendant's medical expert. The defendant hired a medical expert for an independent medical exam. Darrel had undergone neck surgery following his accident by a physician who then retired. Further, the imaging scans showed preexisting conditions in his neck near where the surgery occurred. This made the medical aspects of the case hotly contested. We conducted many depositions and were ready to try this case. The Defendants decided to settle the case shortly before trial and came up with significant money to do so. The case settled for \$150,000. Great result.

Randy settled his case for \$327,500. We also litigated this case until very close to trial. Randy was getting on highway 44 when a work truck rear ended him and caused a whiplash type injury. Randy had neck surgery by a very well qualified physician. In this case, we deposed Randy and deposed many of his treating physicians. We continuously and aggressively worked the case and were successful in the deposition of the defendant. We were able to get the defendant to increase his offer shortly before trial.

We are very proud to help Patricia, Darrel, and Randy recover for their significant injuries and proud that they remain friends of the firm.

Med Pay Benefits

Posted on Dec 22, 2015 By [Gary Burger](#)

I just sent a check to my client and friend Darrel for \$5,000.00 in med pay benefits. I fought against an unscrupulous lawyer for a year to get this check to Darrel without charging a fee on it. I litigated it, had a hearing in front of a judge in St. Louis County, and then arbitrated this matter without charging Darrel. I did this because my firm and I believe that if a lawyer doesn't fight for a recovery they ought not to charge the client.

Almost all auto insurance policies have a medical payment or med pay benefit which pays for medical expenses you incur. This is automatic and it is often paid by insurance companies directly to injured people or their medical providers. Most of the time lawyers do not need to fight to get those benefits. When they don't they should not take a fee. It is unethical to do so.

Our firm regularly collects med pay recoveries for our clients and does not charge anything. If you need a little bit of help to get a med pay payment, I am happy to do it for free. At Cantor & Burger, we only charge for a recovery that we have to fight for. It is true that sometimes we do have to fight for med pay. We have filed suit and litigated over med pay money because we think it is important that clients get the benefits of their insurance policy for which they pay premiums. A fee in this situation is justified.

Auto Crash Settlement

Posted on Dec 18, 2015 By [Gary Burger](#)

We recently settled Brian's auto crash case for \$59,000. He was rear ended in St. Louis County during driving home from work. The other driver was distracted from another wreck. His injuries were typical for this type of impact. The forces of a rear end crash go straight to the spine and the discs between our neck vertebrae are not designed to handle that type of acute force.

Brian sustained a soft tissue injury to his neck and received medical treatment right after the crash. He continued to have pain and went to a good area chiropractor. He consulted with an orthopedic surgeon and received a few injections to help him with his case. We became involved, collected Brian's medical records, and made a demand on the insurance company to settle.

They offered \$24,000 to settle the case, which we rejected. We then filed suit and aggressively pursued the claim. We did depositions, set the case for trial and were ready to try the case. We also reiterated our demand numerous times because most clients, do not want to add to the stress of an injury with a trial. Shortly before trial defense lawyers offered enough money to fairly compensate Brian for his injury, so we settled the case.

The Jury

Posted on Dec 22, 2015 By [Gary Burger](#)

The Seventh Amendment of the United States of the Constitution provides: “In suits at common law, the right of trial by jury shall be preserved.” Jury service is an obligation of members of our community. To get the benefits of our amazing country and justice system, people who are non-felons, over the age of 18 and registered to vote, are asked to serve on juries. Without jurors to perform this essential function, our justice system could not exist.

All jurors called for jury duty are certainly qualified, but a juror’s belief system may determine the type of case for which they are best suited: whether it is a criminal case, a contract dispute, employment discrimination or a personal injury case like auto accidents, medical malpractice or premises liability. People who cannot sit in judgment or convict a person of a crime should not sit on a jury. Recently, a criminal case in front of Judge Jimmy Edwards in the City of St. Louis had to be declared a mistrial because a juror failed to disclose his personal religious view that he could not sit in judgment of others. That juror sat in the corner of a jury room for two days of deliberations despite the request by the jury foreman, jurors and the judge to participate in the decision. That case now has to be retried and was a big of waste of time and money for all involved. When criminal charges are brought against a person, and his or her liberty is at stake, a jury must find that person guilty “beyond a reasonable doubt.” However, when the controversy is civil in nature — a money dispute between two parties — the case must be proven by a preponderance of evidence. This means a party must prove their propositions are more likely than not, or by 51%.

Our firm has already picked three juries through a process called voir dire in 2015. Voir dire is an essential part of trying a case and enables a lawyer to talk directly with

prospective jurors about their personal views. On February 3, 2015, Gary Burger represented a dog attack victim at trial. The dog had not bitten anyone before and the young man did not have that much of a visual scar. Gary was able to strike 28 out of the 50 jurors for cause because they candidly expressed their views that they would either not be able to compensate the plaintiff for his pain and suffering or would require more proof than 51% to award that pain and suffering. Missouri law on challenges for cause provides that “no person who has formed or expressed an opinion concerning the matter in controversy in any case that may influence the judgment of such person... shall be sworn as a juror in that case” (Mo.Rev.Stat. section 494.470.1). Both the prosecutor or plaintiff and defendant in both civil and criminal cases ought to have a fair and impartial jury always. Justice requires this.

Gary’s client obtained a verdict of \$20,000 who had \$3,500.00 in medical bills. This is a good and fair verdict from the jury. The damage instruction in Missouri says that if a jury finds for a plaintiff they “must award such sum they believe will fairly and justly compensate plaintiff for all the damages he sustained.” So, it would be inappropriate for a juror to decide not to fairly compensate someone because they have a personal or political view that personal injury damages should not be awarded or that pain and suffering damages should not be awarded. Some people think a person should only get ten cents on the dollar for their pain and suffering, or needs 85% or 95% proof, rather than 51% for pain and suffering damages. That’s ok – but those who have those beliefs ought to serve on different juries and not personal injury cases. Once potential jurors state they will require more than 51% proof or have trouble awarding pain and suffering damages, defense counsel cannot save a prospective juror by rehabilitating them through coercive leading questions. See *State v. Wacaser*, 794 S.W.2d 190, 192-94 (Mo. Banc 1990); see also *State v. Houston*, 803 S.W.2d 195, 197 (Mo. App. W.D. 1991).

Good lawyers explain these concepts to the jury and make sure everyone in the courtroom understands and is comfortable with monetary compensation to fully compensate injured people. If my great paralegal Casey works 40 hours for me in a week, it would not be fair for me to only pay her for 30 hours and say that I have a political view or a personal view that I should not fully pay her wages.

Let’s make no mistake about why the American public has these views against people who are injured, their lawyers, pain and suffering damages, and fighting for compensation for these injuries. Insurance companies and big corporations have spent millions (or billions) of dollars over the last 20 years – in commercials, newspapers,

other marketing, political donations – to alter people’s opinions about injuries. It used to be that Americans fought and cared for the individual against insurance companies and big corporations. Now, because of billionaires, large corporations, and big insurance companies, people opinions have changed. This marketing continues everyday and insurance companies are right now trying to get prospective jurors to think that people who are injured shouldn’t get any money for their pain and suffering, which is ridiculous, against the law, and against American principles.

Gary Burger said to the jury on February 4, 2015 that “I could not be more proud to be a plaintiff’s attorney representing this young man and his family than I am here today. I would not be anywhere else today.”

Top 2 Reasons To Quickly Investigate Truck Accident Cases

Posted on Dec 11, 2015 By [Gary Burger](#)

Investigating Truck Accident Claims Quickly

St. Louis truck accident lawyer Gary Burger explains why you need your own team of legal experts to quickly investigate the collision.

You have just been involved in a truck crash and the last thing on your mind is finding a truck accident attorney to represent you in your truck accident claim. We understand that recovering from your injuries is your top priority. Your health and wellbeing is our first priority, too. But, we don’t want to downplay the very thing that could be harming your chances of a financial recovery right now. That very thing is the fact that investigating your case can NOT wait.

There are two very important factors that are set into play as soon as the collision occurs. **The first is that the trucking company has likely deployed its own team of lawyers and investigators within the first 24 hours following the accident.** This team of lawyers and investigators works for the trucking company and is charged with finding and preserving any and all evidence that can limit and even defeat your claim for compensation. They already have their investigative team on the case, you should have one too.

The second factor is the fact that the [Federal Motor Carrier Safety Administration](#) only requires commercial trucking companies to preserve key pieces of evidence for a short period of time following the accident. After that time period is up, the trucking companies can destroy that evidence. When we are quickly engaged in the investigative process after your accident, we can pursue the proper legal channels to collect and preserve that key evidence before it is destroyed.

If there is only one thing that you take away from this information, it is that you need to speak with an experienced truck crash attorney as soon as possible to discuss your legal options. With that being said, the choice of a lawyer is an important decision and should not be made with haste. Take the time to vet your lawyer by reading client reviews and inquire further about their process and how they can help you. The [St. Louis truck accident attorneys](#) at Burger Law represent injury victims throughout Missouri, Illinois and the greater Midwest. We are happy to discuss your legal options for free today. Call us toll-free at (314) 542-2222 or request a time to chat using the contact form below.

Hiring a Lawyer For Your Car Accident Injury Case

Posted on Dec 22, 2015 By [Gary Burger](#)

Why hire a car accident lawyer? If you are injured in a car accident, you have one claim and one time to get compensated for your injuries. Many times, people try to handle these claims on their own and many times they can. However, in our experience, insurance companies are out there to collect as much as they can in premiums and pay as little on claims. They are there to pay you as little as possible.

As lawyers, my partner Mark Cantor and I have represented hundreds of people on these types of cases. We take cases, we file suit, we put our gravitas and our energy behind your case and zealously advocate for you to get the most that we can for you. And really it is to get you fairly compensated.

I just settled a case for Sharon and Len Cossey. Literally the trucking company in this case had someone at the scene, a lawyer and an investigator, before they were taken away in the ambulance. So, when lawyers and other folks say “hey, you have got to get

to us soon because the insurance company is working against you,” it is really true, because they are.

The other things I can help you with and lawyers can help you with is that we can:

- Help you navigate the different types of insurance that may come into play: the defendants insurance, your insurance, what to do with your medical health insurance,
- Give you guidance and suggestions on the kind of medical care to get
- Make sure you are fully compensated, tell you the value of this is
- What are your wage loss damages worth?
- What if you have future medical needs?
- How to deal with Medicare or other insurance issues.

You will find as you navigate yourself through this process that there is a host of legal questions that a person like me can help you answer. And I'll tell you, I have folks that come to me and if I am not able to help you, if I cannot add value to your case, I'll say go handle it yourself. I will write a letter for you for free. I'll help you. I'll give you guidance. It is only in those cases where I think with my contingency fee that I take – because you don't have to pay me to hire me, I only get paid at the end of the case—I only take those cases and help those people where I can add value to their case and put more in their pocket than they would get otherwise.

So those are some of the reasons why you should hire a car accident lawyer. I would be happy to visit with you and talk about your case. Thank you.

Highway and Road Construction Zone Accidents

Posted on Nov 22, 2015 By [Gary Burger](#)

Roads and highways are a critical component of our transportation infrastructure. While it is necessary to maintain our roadways, highway construction sites are dangerous and even deadly for both drivers and construction workers. It is important for motorists to keep a proper lookout for construction zones and to adjust their driving accordingly, but there are some circumstances that are beyond the average motorist's control.

Construction companies are often found responsible for road construction zone accidents when:

- State safety regulations are violated causing a hazardous work zone for motorists
- Warning signage is not adequately distanced from construction sites
- Incorrect placement of construction equipment or road markers
- The construction company did not factor in weather conditions to the work zone safety measures
- Unmarked road hazards on construction sites like unexpected dips, turns and shifts in the lanes
- Construction debris left on the road

It can be challenging to determine what parties are at fault for the construction zone accident. Liability depends on the facts and circumstances of the accident, but common negligent parties in these types of accidents include the construction company, equipment manufacturers, city, county, state or federal governments. There are often contracts between construction companies and state or federal governments to predetermine how liability for accidents will be handled by the insurance. A lawyer experienced with highway construction accidents will help you sort out the negligent parties and who can be held accountable for your injuries.

\$95,000 for Passenger Injured in Car Crash

Posted on Dec 22, 2015 By [Gary Burger](#)

On March 20, 2015, Gary Burger settled an [auto accident](#) for \$95,000 with the defendant's insurance company after filing a lawsuit to aggressively pursue the case (Case No. 1422-CC9823) in St. Louis County, Missouri. Our client Melissa was a passenger in the back seat of a vehicle driven by her co-worker. As they were traveling down River des Peres Road in St. Louis County, MO the Defendant turned left into Melissa's car and viciously crashed into the side where Melissa was sitting. Melissa immediately went to the emergency room with severe injuries and then began treatment with her primary physician, physical therapists, and a pain management physician. Melissa received treatment over the past 2 years for her injuries.

After filing a lawsuit and providing all documents in the case, the firm put Geico in a box. They made a time limited demand to settle the case within the insurance policy limits. This was Geico's only chance to settle or they would risk having the defendant personally liable for a judgment over the \$100,000 limits. So, the case settled the morning of the scheduled depositions-saving our client money in expenses and her time.

Burger says "with only \$20,000 in medical expenses the \$95,000 settlement is a great result". Although Melissa had health insurance she still has outstanding medical liens. The firm is currently working to negotiate all outstanding medical liens down to put the maximum amount of money in Melissa's pocket for future medical expenses and financial security.

Burger applies the tactics used in Melissa's case to pressure insurance companies. "Usually big insurers have the power over injury victims, but we know how to level the playing field," he said.

Zuniga Case Result by Burger Law

Posted on Oct 13, 2015 By [Gary Burger](#)

The Zuniga case was recently featured in [Missouri Lawyers Weekly](#) – our client was killed when a trip wire the property owner had put on the property "clotheslined" our client while they drove an ATV.

Gary represented Paul's family in a premises liability all terrain vehicle case. Paul and his wife were ATV riding on property in southern Missouri that they had been to before. They were both on one ATV with Paul driving and were trail riding with the son of the owner of the property. They exited the woods and were headed to another trail head cutting through the front lawn of a house. As they rode between two trees in this yard, Paul's chest struck a metal wire line that had been strung between the two trees. This immediately halted his forward movement and he and his wife were violently recoiled backwards off of the ATV and onto the ground. The force was so great that Paul suffered severe and traumatic abdomen injuries – "barbed wire" injuries on his abdomen and chest. Paul was airlifted to a St. Louis hospital. He had multiple internal organ injuries and suffered cardiac arrest at the hospital. Despite surgery and aggressive, good medical care, he died. Paul's wife was also hurt by the sudden stop and suffered

broken ribs among other injuries. The classic “clothes line” was a dangerous condition of the premises.

Another lawyer got Cantor & Burger involved in the case and we immediately filed suit, served process and engaged in discovery with the defendant. As soon as we learned the insurance policy limits in this case were \$600,000, we made a time- limited, policy limit demand. We advised the insurance company that they had 30 days to pay \$600,000, or the offer would be rescinded and never offered again. Paul’s damages were much greater than this amount; however, his blood alcohol content at the time was .18, over two times the legal limit. The insurance company accepted our demand, and we were fortunate to settle the case for \$600,000 for Paul’s family. We divided the settlement for Paul’s death and his wife’s claims and were able to structure a significant part of the settlement. This will provide payments to Paul’s children for college and their first homes.

The lessons learned from this case are as we have oft advised: be careful around ATV’s, unfamiliar property and don’t drink and drive. It was terrible that this land owner had a wire strung between two trees and certainly should have warned Paul and his wife about it. Had they done so, this accident would not have happened. Fortunately, we were still able to obtain a great recovery in this case.

Fighting a Unique(ly) Bad Insurance Company

Posted on Oct 06, 2015 By [Gary Burger](#)

Irresponsible Actions by Uninsured Driver Eclipsed by Worse Conduct of Insurance Company

On August 27, 2015, Gary Burger tried an uninsured motorist claim for Christopher Smith and his daughter. We won the case, received the [decision](#) last week, and Unique Insurance was ordered to pay a total of \$49,930.40 plus costs. There has been no payment to date and we are pursuing a bad faith claim in Illinois under 215 ILCS § 155. Unique treated their insured terribly (and has a reputation for doing so); Unique violated the basic rules of how insurance companies should treat their premium paying customers. Gary will likely seek to expand this case into a class action – so call us if you or a client has had similar experiences. The facts of this case are amazing and show

what a hero Chris Smith is – battling both a crazy driver who hit him and Chris' own insurance company.

Chris was driving his daughter home from school 3 days before Christmas 2012. As they were stopped at a stoplight, a reckless driver rear ended them while playing with his phone. It was a hard impact. Chris exited his vehicle and the other driver offered Chris \$1000 to leave. Chris refused and said that he would call and wait for the police. The driver was incredulous at this, yelled and cursed at Chris and acted very aggressively. So, Chris, a security officer with a proper conceal and carry permit, returned to his vehicle and retrieved his weapon. The driver was not dissuaded by the weapon and tried to drive away. Chris reached into the driver's car, turned off the ignition, and took the crazy driver's keys. The police arrived and took the kicking and screaming driver into custody. Both vehicles were towed from the scene.

Christopher sought treatment immediately and his daughter treated a few days later. They had care from emergency rooms, MDs, a chiropractor and received MRIs – which showed they both had suffered herniated discs from the crash. They did improve, but Chris and his daughter have continued problems and pain. The impingement on their nerves causes leg pain weakness and numbness. Gary filed a lawsuit in Illinois right away and aggressively pursued the case against the crazy driver and his mother (who held insurance for the car). However, there was an interesting turn of events: The defendant's mother claimed her son had stolen her car when he crashed into Chris. So, the defendant's insurance company denied coverage as the crazy driver was not a permissive user of the vehicle. The insurance company filed another case against Chris (which we defended) seeking a declaratory judgment that the crazy driver was not insured. Those two cases are still pending. But that isn't the bad insurance company.

We made an uninsured claim against Chris' insurance company, Unique Insurance, as the crazy driver in the [car accident](#) had no other coverage. Unique Insurance had promised to pay Chris if an uninsured driver injured him or his family under Illinois law. But Unique refused to answer our letters or talk to us. We told them about the case and Chris' and his daughter's damages; we provided medical records, bills, depositions of medical treaters and our clients, MRI films, etc. to support our claim. No written reply or any response from Unique occurred. Ever. Nothing offered to Chris. The adjuster only took one call from us in a year and a half and yelled at Gary the whole call.

[Gary](#) filed an arbitration case against Unique. Illinois law mandates arbitration, meaning no jury trial or judge, for an uninsured claim. We tried this case in an arbitration hearing

and won handily. The arbitrator gave us all available damages up to the policy limits, and then some. The arbitrator could not award damages for Unique's bad faith conduct or rule "on whether alleged bad faith from respondent's failure to response to those demands creates additional liability for claimant's injuries. In no way should this award be interpreted as a way to bar further proceedings on those potential entitlements in the appropriate form." Illinois law provides that an insurance company's bad faith refusal to settle or properly evaluate a claim should be heard by a jury.

Unique's conduct throughout the claims process was ridiculous. No response, communication or offer – then Unique's lawyer walked into the arbitration hearing saying "I don't know why I'm here" as his client had no defense. Unique presented no evidence at trial. Unique's bad faith conduct is incredibly aggravating to us and Chris. Americans can get numb to companies treating us bad as it happens so often, but Chris and our firm will keep fighting. We will let you know how the bad faith case goes.

5 Lawsuits in 1 Day: Car Accidents

Posted on Sep 22, 2015 By [Gary Burger](#)

It has been a busy Friday at Cantor & Burger! I filed five lawsuits today in St. Louis City and St. Louis County. Four of the five lawsuits involved drivers who chose to violate the rules of the road and, as a result, seriously injured our clients in car accidents. These rules come from the [Missouri Drivers Guide](#).

Here is just a sample of the rule violations that led to today's lawsuits:

- Drivers should not cross a sidewalk or crosswalk without first yielding to pedestrians
- Drivers entering a road from a driveway, alley or roadside must yield to vehicles already on the main road
- When passing, give bicycles a full lane width. Do not squeeze past these road users.
- The speed limit is the maximum allowable speed in ideal conditions. Adjust your speed for hills, curves, slippery roadways, limited sight distance, pedestrians, bicyclists and slow-moving vehicles

No one should ever be in too much of a hurry or too distracted to not drive safely while behind the wheel of a vehicle. Take your time and be safe out there. Don't drive *intoxicated*.

Vince's Story of Survival is a Cautionary Tale for Drivers

Posted on May 18, 2015 By [Gary Burger](#)

Vince was struck by a car while riding his motorcycle in October of 2014. The circumstances that led to his [motorcycle accident](#) are far too common. A driver was waiting to make a left turn into traffic. She saw the pickup truck that Vince was following as it approached her, but she did not see Vince on his bike behind it. His bike was too small and the truck was too large, obstructing her view. Assuming that there were no vehicles behind the pickup truck, the at-fault driver directed her attention to traffic coming from the other direction and entered into the road. She crashed into Vince, violently throwing him from his bike.

When all was said and done, Vince had to receive 13 pints of blood to save his life and his leg was amputated below the knee during emergency surgery. Vince's injuries were life changing. He will never be the same again. Fortunately he survived the accident and has taken everything in stride. He has a great support network and an even better outlook on life. We are proud to have helped such a good person recover from such a horrific accident. Due to the limited recovery and the life changing nature of Vince's injuries, Gary Burger decided to represent Vince pro bono in this case. He did not charge a fee and helped Vince for free.

Missouri's Rules of the Road as outlined in the Driver's Guide dictates that "drivers entering a road from a driveway, alley, or roadside must yield to vehicles already in the main road" and "drivers turning left must yield to oncoming vehicles going straight." Considering that nearly 42% of all two-vehicle fatal motorcycle crashes involve a vehicle turning left while the motorcycle is going straight, it is important that we all take extra time to ensure that the road is clear of oncoming traffic before proceeding with our turn. We need to pause long enough to determine there are no smaller vehicles following behind the ones we can immediately see. Someone's life may depend on it. More than 4,000 people die in motorcycle accidents every year. If we all use more caution while driving, we could help make our roadways safer for motorcycles, bicycles and smaller cars.



Southern Illinois Truck Accident Case Settles for \$305,000

Posted on Jan 13, 2015 By [Gary Burger](#)

I am thrilled to have recently settled a truck/auto collision case in Southern Illinois. My three clients were husband and wife and grandmother in a car that was hit by a tractor trailer truck. They were traveling from a family dinner and proceeding northbound on Route 3 in Waterloo, Illinois.

As they approached an intersection, a truck was making a local delivery at night and made a left hand turn directly in front of them. My client Len did not have time to stop and skidded into the front of the tractor trailer. A photograph of the accident is posted above.

The truck driver did not get out of his vehicle, apologize, or even speak to my 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. So, when we say that [trucking companies, insurance companies, or big corporations are working immediately against you on these cases](#), we are not exaggerating.

The trucking company's lawyer came to the scene and took photos of my clients being taken away in the ambulance — that is how quickly they were at the scene. They were transported to St. Anthony's Hospital.

Len and Alline treated for a period of time for soft tissue injuries, but Sharon had a broken bone in her hand. She then had reflex sympathetic dystrophy and ongoing problems with the case. We successfully settled all three cases after extensive litigation which included mediation for Sharon's case. We are happy to get a total of \$305,000 for a broken bone in a hand and soft tissue injuries.

Civil Successes by Gary Burger

Posted on Nov 04, 2014 By [Gary Burger](#)

Two car accident trials in Missouri and Illinois

Gary Burger tried a two plaintiff car accident case in Springfield, Illinois. The jury returned a verdict for a fair result. It is good to try cases in Illinois. Illinois is different than Missouri in three main areas of law:

- First, by Supreme Court rules, the Judge does most of the questioning of the jury and did so in this particular case. Gary was limited in the questions he got to ask the jury.
- Second, the jury instructions in Illinois are longer and more detailed than in the State of Missouri. We found the instructions in Illinois to be very helpful in trying to advocate for a good recovery of our clients.
- Third, there are a number of other procedural differences in Illinois. Examples of these differences are that we get to put in the entire amount of medical damages rather than the amount of medical expenses and what was paid to satisfy those expenses like we normally see in Missouri. Also, we need a unanimous decision in Illinois rather than just 9 of 12 jurors in agreement as we are accustomed to in Missouri.

A bus/cyclist trial. Gary tried a case in the City of St. Louis in which he represented a bike rider that was hit by a bus. It is always a challenge in trying a case with a bike rider. The public, and hence juries, many times have a dim view of bicycle riders and have a tendency to put a higher duty of care on a bike rider than anyone else because they

don't have a lot of metal around them to protect them like people in cars do. Gary also is a bike rider and knows this first hand from being on the road and dealing with traffic. So remember, bike riders, just as we ask cars to share the road with bicyclists and be courteous, bicyclists must return the favor and be courteous and respectful to the bigger vehicles on the road.

APPENDIX II: PUBLISHED ARTICLES ABOUT SOME CAR WRECK CASES

Please go to <http://burgerlaw.com/personal-injury-claims/car-accidents/> for more case results.

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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, Ryneearson, Suess, Schnurbusch & Champion, St. Louis, for Carrie Strupp

ment. 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-

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

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."

Missouri Lawyers WEEKLY

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Motorcycle crash case leads to plaintiff win

Man returned to work as painter six months later



Gary K. Burger Jr.

By ALAN SCHER ZAGIER
Special to Missouri Lawyers Weekly

A Jefferson County jury awarded \$142,000 to a 55-year-old Imperial man who alleged his motorcycle was struck by a vehicle in March 2011.

Randy Overy filed suit against Kristina Borovic in Jefferson County Circuit Court on June 6, 2011, less than three months after the accident on Lemay Ferry Road.

Overy alleged that Borovic pulled in front of him without yielding at a stop sign while turning onto Lemay Ferry from a side street. Overy was thrown from his motorcycle, causing injuries to both knees, his left foot, ribs and more. He also suffered a torn rotator cuff that required surgery to repair.

The case went to trial in late March,

with a Jefferson County jury siding with the plaintiff after a trial that lasted less than two days.

Gary Burger, Overy's attorney, said his client was able to return to work as a painter six months after the wreck and is a "salt of the earth guy" who primarily sought reimbursement of his medical costs rather than pursue a continuing wage loss claim.

Overy is "honest in the extreme," Burger said, and "insisted on the stand that he could paint as good as before and as fast post-injury."

Defense attorney Gerald Sims did not respond to a request seeking comment on the case by press time. Online court records indicate the defense filed a motion seeking a new trial, which was pending.

NC

■ \$142,000 verdict

MOTOR VEHICLE COLLISION

■ **Venue:** Jefferson County Circuit Court

■ **Case Number/Date:** 11JE-CC00532/March 27, 2012

■ **Judge:** Circuit Judge Gary P. Kramer

■ **Plaintiff's Expert:** Dr. Robert Medler, St. Louis (orthopedic surgery)

■ **Special Damages:** Medical expenses: \$54,000 charged, \$4,500 paid; \$19,000 owed

■ **Last Pretrial Demand:** \$140,000

■ **Last Pretrial Offer:** \$103,000

■ **Insurer:** Safeco Insurance

■ **Caption:** Randy Overy v. Kristina Borovic

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

■ **Defendant's Attorney:** Gerald A. Sims Jr., Rouse & Cary, Sunset Hills

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■ \$327,500 SETTLEMENT

On-ramp car accident leads to settlement for St. Louis man

MOTOR VEHICLE COLLISION

■ **Venue:** St. Louis Circuit Court

■ **Case number/date:** 1322-CC1078/April 4, 2014

■ **Judge:** Philip Heagney

■ **Plaintiff's expert:** Dr. Peter Mirkin, Tesson Ferry Spine & Orthopedic Center, Sappington (surgical specialties)

■ **Caption:** Robert Davenport v. Hoppy's Self Service Inc.

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

■ **Defendant's attorneys:** Scott Harper and John Andrew Mazzei, Brinker & Doyen, St. Louis

BY ALAN SCHER ZAGIER

Special to Missouri Lawyers Media

A St. Louis man injured in a 2012 rear-end collision with an employee of a washing machine repair company settled a claim with the other driver and the company for \$327,500.

Robert Davenport filed suit against Hoppy's Self Service Inc. and employee Philip White of Belleville, Illinois, in May



Gary Burger

2013 following a March 2012 accident on the Interstate 44 entrance ramp at Southwest Avenue in the city of St. Louis.

According to the petition, White hit Davenport from behind after failing to notice a stalled truck that had forced Davenport to stop. White later said he was distracted when he reached down to pick up a set of keys that had fallen to the floor, according to plaintiff's attorney Gary Burger Jr. of Cantor & Burger in St. Louis.

Burger said his client, who was without health insurance, suffered injuries to his neck and right shoulder that required surgery.

Defense attorney Scott Harper of Brinker & Doyen in St. Louis confirmed the settlement details but otherwise declined comment. **MO**

November 24, 2014

Missouri Lawyers WEEKLY

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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

■ \$305,000 SETTLEMENT

Woman hit by state truck gets settlement

MOTOR VEHICLE COLLISION

■ **Venue:** Pemiscot County Circuit Court

■ **Case number/date:** 12PE-CC00401/June 30, 2014

■ **Judge:** Fred Copeland

■ **Plaintiff's expert:** Dr. Per Freitag, Springfield, Illinois (surgical specialties)

■ **Caption:** Patricia Singh Stevens v. Missouri Highway and Transportation Commission and Robert L. Pulliam Jr.

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

■ **Defendants' attorney:** Jason Saey, Missouri Highways and Transportation Commission, Chesterfield

BY ALAN SCHER ZAGIER

Special to Missouri Lawyers Media

An Illinois woman injured when a Missouri Department of Transportation dump truck struck her car in 2009 settled a Pemiscot County lawsuit against the state agency and its employee for \$305,000.

Patricia Stevens, 56, formerly of Dyersburg, Tennessee, and now a resident of Springfield, Illinois, was driving a 2006 Ford Explorer on a rural road in southeast Missouri



Gary Burger

in August 2009 when her vehicle was hit by a MoDOT dump truck that was backing up to pick up trash, according to a state Highway Patrol accident report.

"I saw him backing and started honking the horn," Stevens told a state trooper.

Plaintiff's attorney Gary Burger of Cantor & Burger in St. Louis said his client wasn't seriously injured at the

time but experienced some pain her doctor attributed to the collision and later had neck fusion surgery.

The suit was originally filed in St. Louis County but transferred to Pemiscot on a change of venue. Scheduled for trial in mid-July, it was settled in late June.

Burger said the settlement relied on an exception to the state's sovereign immunity protections since its employee was at fault.

Opposing counsel Jason Saey of the state Highways and Transportation Commission did not respond to a request for comment. **NIC**

December 1, 2014