

"THE RESOURCE
for motorcyclists in Kansas City!"



THE DEVIL'S ADVOCATE

**A Biker's Guide
to Accidents and Injuries**

By James Roswold



NO FEE FOR KIDS!

What Is Our No Fee for Kids Program?

We believe kids are special, and if a child's motor vehicle accident case can be settled without a lawsuit that child would greatly benefit if not charged an attorney fee. Here are some program details:

- Kids 12 & under at time of a MO/KS motor vehicle accident are eligible
- The accident must have occurred in MO/KS
- We will not charge an attorney's fee if the case is settled without a lawsuit
- We will advance costs and expenses. We will be reimbursed for costs and expenses only if we recover or a court directs



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KANSAS CITY ACCIDENT INJURY
ATTORNEYS



The choice of a lawyer is an important decision and should not be based solely on advertisement. Every case is different and must be judged on its own merits. Past results afford no guarantee of future results. Meetings with attorneys are by appointment only. We will advance costs and expenses. We will be reimbursed for costs and expenses only if you recover or a court directs.

Free newsletters from Kansas City Accident Injury Attorneys

Want to know how best to deal with insurance company denials? Want to find out specific steps you can take to find the best lawyer for your case? Want to read the “inside story” about frivolous lawsuits? Would you like some practical advice about buying insurance from someone who does not sell insurance?

These are some of the topics that are covered approximately twelve times a year in a free newsletter sent to your home by me and my Kansas City Accident Injury Attorneys.

We strongly believe that most legal disputes could be avoided if people had better general knowledge about the legal system, insurance coverage and the insurance claim process.

There is absolutely no cost or obligation and from time to time we run contests to give away free stuff!

If you subscribe and later feel like we are wasting your time, there is an 800 number in every issue that you can call to “unsubscribe.” Don’t worry, this is not the boring “canned” newsletter that most firms buy and slap their name onto. We are actively involved in the writing process and we aim to provoke people to pay more attention to their legal affairs.

OUR SERVICES

Very simply, we are here to represent you at every step of the way in your personal injury claim. Our mission is to advocate your interests fully and ethically in a manner that is intended to compensate you as fully as possible for the injuries you have suffered.

Sometimes, the best advice we can give is that you do not have a claim that can be won. If that is our opinion of the case, we will tell you so. We are not here to pursue claims we believe have no merit. That would not be in our interest and is certainly not in yours.

If your case meets our criteria for acceptance, you can be assured that we will fully pursue your claim and provide you with the information and advice you need in order to be able to make your way through the legal process. We will keep you advised regarding the status of the case and whether the case should be settled or whether you should go to trial.

An initial consultation regarding your case is free. We will fully explain all fees and costs to you before proceeding. Together as a team we will decide on the best approach to a positive resolution of your claim.

CONTACT US



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About KCAIA

LEGAL MUMBO-JUMBO

I wouldn't be a very good lawyer if I didn't include some legal disclaimer related to the information in this book! While this book is intended to educate you about your personal injury claim, it is not intended to give legal advice. It is not intended to substitute for legal counsel on your case. I cannot give you legal advice about your case unless you have retained me to represent you. The information in this book is intended only for educational purposes.

If you would like more information about me or my firm, please visit www.kansascityaccidentinjuryattorneys.com.

It has been my pleasure and honor to have dedicated my legal career to representing injured people since 1993. Over the years I have handled hundreds of personal injury cases including many motorcycle and other motor vehicle accident injury cases and have dealt with all of the major insurance companies in Missouri and Kansas. I have litigated and gone to trial, arbitration, and mediation in many cases. Personal injury is not only all that I do, but it is all that I have ever done.

I attended the University of Minnesota for my undergraduate education, then University of Iowa School of Law. (It was during my time at the University of Minnesota that I first learned to ride a motorcycle.) After I graduated I immediately passed the bar. After a short stint learning the ropes with an insurance defense litigation firm, I soon began representing individuals against insurance companies and large corporations and have done so ever since.

My firm does not base its business on a high volume or the “personal injury mill” model. We are very selective about which cases we accept. If I believe a person can settle a case himself and would be better off not hiring me, I will tell him so. I will also not hesitate to advise a person if I believe a case cannot be won or if the risks of pushing forward would outweigh the costs.

If we don’t accept your case, it is not necessarily the end of the road for you. There are lots of attorneys out there, and I’m sure you will be able to find someone willing to take on your fight. If we do accept your case, you will have a team behind you to make sure the details of your claim are taken care of. We will vigorously pursue your case. We understand how stressful a motorcycle accident injury claim can be and we understand that you have hired us to alleviate your anxiety. We are a small firm that has a hands-on approach to make ourselves accessible to our clients.

INFORMATION ABOUT MY PRACTICE AND ME

CAUTION

My assessment of the impact of prior injuries can be significantly affected by the jurisdiction in which your claim would be filed in the event that litigation were required. It varies widely from Missouri to Kansas, and from county to county within those states, as to the conservative nature of the jury and therefore the size of the potential obstacle to recovery presented by the particular prior injury. Every claim is different and judged on a case-by-case basis utilizing such things as jury verdict information along with my years of experience as a personal injury attorney.

- Cases where you have had numerous other claims or consecutive accidents. Once you have entered the insurance industry's database with multiple claims, settlement tends to be very difficult. Juries also tend to be unsympathetic to a person who makes multiple insurance claims.
- Cases where the person has a significant criminal history, particularly with crimes involving dishonesty, deceit, or fraud. Certain types of criminal history are admissible at trial and will severely undermine a person's credibility with the jury. Even getting a settlement out of the claim will be difficult, not to mention a favorable jury award, depending on the nature of the past criminal history and the particular jurisdiction among other things. Once again, the analysis is made on a case-by-case basis.

It is my goal to provide the best legal services possible for my clients and I choose to select a smaller number of cases involving more serious injuries to which I can give my undivided attention. Of course, these are only guidelines and I approach each case with an open mind and a desire to help every injury victim that I possibly can. If you would like a free consultation to discuss your case, please do not hesitate to contact my firm.

CAUTION

Missouri is a pure comparative fault state - any portion of fault that is attributed to you simply decreases the amount of your recovery by that percentage. Thus, you still may have a likelihood of some recovery even in the event that you are found to bear a significant degree of fault for the collision. Kansas is a modified comparative fault state and you will recover nothing in the event that you are found to be 50% or more at fault for the collision.

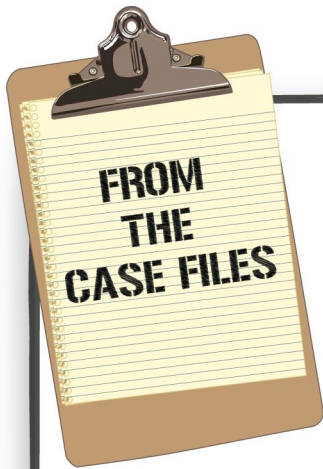
- Cases in which the body parts injured in the accident were previously significantly injured, particularly if there were any ongoing complaints of injury or a recent or ongoing history of treatment involving those body parts at the time of the accident. Again, juries tend not to want to award money to a person who has had a longstanding injury to the area claimed to be hurt in the accident. The risks in going to trial are too great in such cases and the insurance company knows this and therefore is less inclined to offer a fair settlement even in cases in which the injured victim is represented and has an otherwise solid case. Depending on my assessment of the likelihood of recovery, I may not accept these cases.

My law firm is purposely small and focused exclusively on personal injury cases; we can't take every case and don't want every case. After years of representing all kinds of people in all types of personal injury cases, I have learned that providing high quality representation means limiting the number of cases that I accept. This way, I can devote more time and attention to each client to get the best results. I'm not the lawyer for everybody. Similarly, some cases aren't for me.

If your case has one or more of the following I may not be willing to represent you:

- Accidents where the statute of limitations is about to run. Serving the defendant(s) in a lawsuit can take time and if it is not done precisely, then the case is gone forever. Therefore, if it has been two years since you were in a motorcycle or auto accident, and the statute of limitation is upon you in Missouri (generally 5 years) or Kansas (generally 2 years), I will not likely take your case because I won't have adequate time to ensure it is done correctly.
- Cases where the motorcyclist doesn't have a valid endorsement to ride the motorcycle. Juries, arbitrators, and judges do not look favorably on a rider who is not certified to ride the bike. They equate not having an endorsement with being unskilled at operating the bike, meaning you might have been at fault for the crash. Whether you think this is unfair, it is reality and an attorney will not be able to change their minds and successfully prove liability in all but the most obvious cases. Riding without an endorsement is against the law and can ruin your case.
- Accidents where you have significant contributing fault. This can often be difficult to determine at first, but, if after a careful analysis of the specific facts of your accident I determine that I don't think we can win on liability, then I will not be willing to represent you.

WHAT CASES WE DON'T ACCEPT



In a case, my 28-year-old client sustained a neck injury resulting from a rear end motor vehicle collision. She had painful neck injuries immediately following the collision and required a cervical fusion surgery. She had no neck complaints prior to the collision.

The insurance company hired a local neurologist, who concluded that she would have needed neck surgery even if the collision had never occurred based upon an MRI that showed some pre-existing spinal degeneration. Fortunately, my client's treating physician, a neurosurgeon, gave compelling deposition testimony that the need for surgery resulted directly from her collision injuries and that it was pure speculation to suggest that this symptom-free young person would have needed surgery even had the accident not occurred. We were also able to point out that the insurance doctor only saw our client once, was a neurologist and not a surgeon like our client's treating neurosurgeon, had no doctor-patient relationship with our client, and was paid by the insurance company among other things. We were able to settle this case for value notwithstanding the insurance company IME. This was one of the more aggressive efforts to minimize and destroy cases that I've seen, but illustrative of how far insurance companies will go.

- A case can be tried in front of a jury, which is called a “jury trial,” or in front of a judge with no jury, which is called a “bench trial.” In certain situations, an injury case can be heard by a judge rather than a jury if neither party requests a jury trial. In almost every case, however, the insurance company will request a jury. Insurance companies know that it is difficult to get a jury to sympathize with an injury victim. As a result of a million dollar propaganda battle waged by the insurance companies in an effort to prejudice people against injured victims, juries generally have preconceived misconceptions about frivolous lawsuits, rising insurance rates, reckless motorcyclists, and run-away verdicts, which results in lower awards to plaintiffs and more profit for insurance companies. In this environment, it takes an experienced personal injury attorney to recover a fair value settlement or have a fighting chance at a fair verdict in the event that a fair settlement cannot be obtained.
- When a lawsuit is filed, the defendant can force the plaintiff to go see the doctor of his or her choosing for an examination. The truth is that an independent medical examination is not independent. I’ve seen so many of these reports that are all the same. Often these doctors make most if not all of their money by performing these examinations for insurance companies and are chosen specifically because they help to undermine your case. They do this by saying the person wasn’t injured in the accident, that the injury was pre-existing, that the injury was caused by something else, or that the treatment wasn’t necessary. At trial, the insurance doctor will testify about his or her findings to try to discredit the plaintiff’s treating doctor’s opinions, even though the examiner only saw the plaintiff for a short time. These doctors are nothing more than “hired guns” for the insurance company.

Very few people who aren't attorneys sit through a jury trial from start to finish. If you have, you know that it's nothing like what you see on TV or in movies. If you haven't, you are probably like most people and think about the courtroom as depicted in "Law and Order" or A Few Good Men. In my years of experience, I've found that people have many misconceptions about what really happens in a trial and most of my clients are genuinely shocked by the truth. As a result, I always sit down with my clients before they make the decision about whether or not to go to trial and educate them about some realities about the courtroom.

- Frivolous cases do not survive litigation. The legal process was created to weed out cases that are without merit. At times, you might have read about a case that appears to stretch reason, but keep in mind that if the story you heard about was actually



- true, then the case was examined by a judge and jury and made it through the scrutiny. Also remember that only the jury knows what evidence they thought was important, and how they reached the verdict that they awarded.
- In Missouri and Kansas, the word "insurance" can never be mentioned in the courtroom. The jury is never told that there is insurance that will cover any judgment or settlement. In Missouri and Kansas, even mentioning the fact that a party is insured is grounds for a mistrial. However, in reality, the insurance company has not only hired the attorney representing the person at fault, but they will also be the one paying at the end of the day. The individual defendant generally has little input in how the case is handled. It's really up to the insurance company.

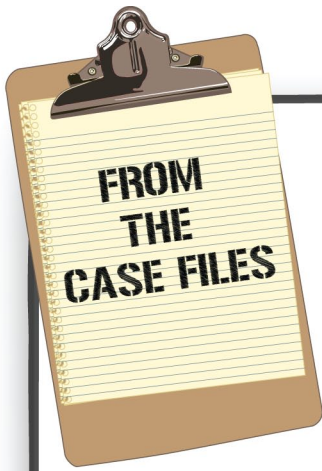
WHAT I WISH EVERY INJURED PARTY KNEW ABOUT THE COURTROOM

counsel, meaning that they don't have to pay attorneys by the hour to represent them. These companies are not saving money primarily by avoiding a lawsuit but by minimizing and destroying claims of injured victims.

Myth #5: There is a set equation to estimate the value of a claim.

You might have heard that a claim should be worth three times the amount of medical bills that you incurred from the accident. However, the reality is that this is not true because every case is different. For instance, if you were to break your ribs, there would be little a doctor could do to treat your injuries and your appointments would be sporadic over a number of months. However, your pain and suffering would be great. Every move you make would be agonizing and even breathing would be painful. That case would have relatively low medical bills. On the other hand, if your injury is to your muscles and soft tissue in your neck or back, you would need regular treatment, sometimes on a daily basis, while the injuries healed. Your pain and suffering could be considerably less than the case of a broken rib, but the bills for treatment would probably be higher.

In comparing those two injuries, the bills for treating a broken rib would probably be much less than the bills for a soft tissue neck and back injury. However, the general damages for the rib injury might be much higher than those for the soft tissue injury. As you can see, valuing claims cannot be reduced to a formula. Don't listen to people who tell you how much they think your case is worth or how much they or someone they know received for an accident. Every case is unique and only an experienced personal injury attorney can offer sound advice about the value of your case.



Ms. Jones was seriously injured when a teenager hit her after running a stop sign. She incurred substantial medical bills which exceeded the limits of the insurance policy. The Allstate insurance adjuster on the claim told Ms. Jones' family that it would represent her and would compensate her appropriately but would not represent her if she hired an attorney. The adjuster then told Ms.

Jones that she needed to settle the claim for the limits of the policy. However, settling would have resulted in her releasing any other claims she had against other at-fault parties, which would have resulted in her losing hundreds of thousands of dollars.

Ms. Jones hired an attorney who obtained Allstate's insurance adjuster training manual, which directed the adjusters to contact accident victims immediately after an accident and inform the victims that they did not need an attorney to receive fair treatment or fair settlement. Allstate's goal was to keep attorneys out of the claims process, thereby paying out less money to claimants. The Washington State Supreme Court ruled that Allstate was engaged in an illegal practice of law when it advised Ms. Jones to accept the settlement offer that only benefited the company and she was allowed to recover money against the insurance company for its practices.

Myth #4: The insurance company will make a reasonable offer to settle your claim to avoid having to hire an attorney to defend the case.

This is simply not true. The insurance companies see this as nothing more than a cost of doing business. Also, there is an increasing trend towards insurance companies using in-house

Myth #2: You have to give the adjuster a recorded statement.

If a lawsuit hasn't been filed, you do not have any obligation to give a statement to the other driver's insurance company, recorded or otherwise. In fact, these often work against you because the adjuster can ask virtually any question without objection and the claimant locks him or herself into answers early in the claim. Providing a recorded statement without first obtaining proper consultation is one of the most dangerous actions an injured victim can take. The recorded statement is taken by professionals and is designed to minimize or destroy your injury claim. Being properly prepared for it, even in the most clear liability and injury cases, is not as simple as planning to tell the truth. Being unprepared and giving inaccurate answers to certain questions specifically designed to wreck your claim WILL wreck your claim. This issue is so important to the injured victim that we have entire videos and articles devoted to the subject on our website: www.kansascityaccidentinjuryattorneys.com. It is important to speak to an attorney before agreeing to a recorded statement. Often an attorney will sit in on a recorded statement to protect your case.

Myth #3: Insurance adjusters are always honest with claimants.

In the days after a claim is opened, the adjuster's goal is to find out as much as possible about a claim to find any weaknesses to exploit. Adjusters can sometimes say something just to see if the claimant will give them what they want or to see how the individual reacts.

There have been documented instances of insurance companies using fraudulent means to get a claimant to accept a low settlement offer.

Myth #1: You must sign every document the adjuster sends you.

You are not required to sign a release of information for the other person's insurance company. While an adjuster may want to look at your medical and employment records to assess your injuries, they do not have a right to the documents unless a lawsuit has been filed. Even then, depending upon the circumstances they are not necessarily entitled to an unlimited release providing them with access to every record in your entire life, which is what you are providing if you sign such a release of information for the other person's insurance company.

CAUTION

Some people sign such insurance documents without first obtaining proper consultation, or representation if appropriate, under the mistaken impression that this will speed up their claim. Sometimes they arrive at this mistaken impression on their own.

Sometimes it is implied expressly stated by the insurance adjuster. The fact is that signing such documents without representation may delay, minimize, or wreck your claim but is unlikely to speed up your claim.

As explained earlier, the primary purpose of the insurance company is to earn a profit, and its adjusters are not rewarded for speedy payment of fair compensation to injured victims. To speed up as well as protect your claim, you should proceed only after obtaining proper consultation, which can be facilitated quickly and with no obligation, and representation if necessary.

MISCONCEPTIONS ABOUT THE CLAIMS PROCESS

In Missouri, every policy of automobile and motorcycle insurance must contain at least minimum uninsured motorist coverage (also referred to as UM coverage) of \$25,000 per person and \$50,000 per accident but underinsured motorist coverage (UIM) is optional. In Kansas, every insurance policy must provide underinsured motorist coverage in the same amount as the liability insurance purchased. UM/UIM coverage will compensate you for damages caused by either an un-insured motorist, or an insured driver who does not have enough insurance to compensate you fully. Since injuries and damages in motorcycle accidents can be high, you should get as much UIM/UM coverage as the insurance company will sell you. Too many times in my practice I have personally witnessed situations in which insufficient UM/UIM coverage limits have resulted in tragic consequences to the automobile driver or motorcyclist, and the cost liability and UM/UIM coverage is insignificant relative to other coverages that provide much, much less bang for the buck. I recommend that you get as much liability and UIM/UM coverage as possible.

Most people do not know that you may have to reimburse any insurance company (PIP, Health Ins., etc) that has paid any benefits for you out of any money you get at settlement or verdict. This means that if your health insurance paid for your doctor visits, you may have to reimburse them. If your PIP insurance paid for medical bills and/or wage loss, you have to give them some money back, too. It's call "subrogation" and it's a right the insurance company has written into its contract. It is the law, and unfortunately, we do not have a choice. If you don't reimburse them, they can sue you for the money, take your house, your wife and your dog. They often will file a "lien" against the settlement. However, the good news is that there are rules about if, when, and how much they can take. Usually, you don't have to pay them back the full amount they paid, and sometimes you don't have to pay them back at all. The rule controlling subrogation are very complicated, vary from state to state, and often involve an interplay between federal and state law, and it takes an experienced attorney to know how to handle these claims and protect and preserve your money to whatever extent possible.

In Missouri and Kansas, insurance companies are obligated to offer other kinds of coverage when a person is purchasing motor vehicle insurance. In Kansas, every automobile insurance policy must contain personal injury protection (or PIP). PIP coverage will pay for medical bills, wage loss, and other benefits that are caused by an auto accident. PIP coverage is “no fault,” meaning that even if you are at fault for an accident, you still get your PIP coverage. The insurance company is required to offer PIP coverage to someone purchasing motorcycle coverage as well, but a motorcyclist doesn’t have to purchase the PIP coverage. His or her rejection of PIP must be in writing. Even if the person rejected PIP, he or she may be entitled to benefits if the company cannot produce the signed rejection on file. Unfortunately, it is not unusual for the insurance procurement process to be both fast paced and uninformative and there is a higher risk that there may be an injury when a motorcycle is involved. I have seen a situation in a motorcycle injury case in which the motorcyclist while obtaining insurance has opted out of PIP coverage, in writing, without realizing what he has done, and then an accident occurred and the written opt-out, signed by the motorcyclist and produced by the insurance company, came as an unpleasant surprise. Worse yet, this motorcyclist had no other coverage to pay his medical bills, such as health insurance, and it became a significant hurdle in helping him to get the medical treatment he needed. The moral of this story, as with many other unpleasant insurance stories, is to listen very carefully and make informed choices when procuring insurance!

In Missouri, there is medical payments coverage (or MPC) that will pay for medical bills caused by an auto accident regardless of fault. However, insurance companies are not required to offer MPC coverage to automobile drivers or motorcyclists in Missouri. Again, there is a higher risk that there may be an injury when a motorcycle is involved and MPC coverage may be more significant for the motorcyclist, even crucial if he or she does not have health insurance, and its purchase is highly advisable.

In both Missouri and Kansas, motorcyclists are required to carry liability insurance of at least \$25,000 per person and \$50,000 per accident. As we all know, riding a motorcycle puts you at greater risk for getting into an accident. Even the most experienced rider can be hit by a car driver who isn't paying attention or refuses to share the road. Because of this, I highly recommend that you get insurance on your motorcycle. Do your research, call around, and find a company that will write you a decent policy. This is just as important as wearing a helmet and getting your endorsement. It is your responsibility to take care of yourself because the car drivers and their insurance companies won't. Let me give you some pointers on insurance.

CAUTION

An automobile driver in Missouri and Kansas must have at least \$25,000 per person limit or \$50,000 per occurrence limit for liability coverage in case they cause an accident.

The fact is that if a driver has these minimal limits, the most an insurance company will pay to any one individual will be \$25,000 and the most it will pay for any one accident, regardless of the number of people injured, is \$50,000. This means that if you are hit by a driver with minimum limits, it will pay no more than \$25,000 for your claim and no more than \$50,000 collectively even if the total claims exceed this. For example, if there are 5 people injured in an accident, you could have to split the \$50,000 among the five of you. On a person's insurance policy, the above example of minimum liability limits would typically have a code in front of it, such as the letter "A," and state "liability ... bodily injury 25,000/50,000" or perhaps 25/50. The first number is the per person limit and the second is the per accident limit. The most common amounts are 25/50, 50/100, and 100/300. Greater limits are also available.

INFORMATION ABOUT INSURANCE

medical treatment, additional medical treatment, evaluation by specialists, diagnostic test, and when to terminate their medical treatment. I can think of worse case of a wolf in sheep's clothing. I suppose the insurance companies' million dollar advertising campaigns have something to do with people being lulled into thinking the insurance company adjusters are anything but on the opposite team, and a very effective opponent and formidable adversary. Nevertheless, I am still amazed and saddened when a client has failed to obtain proper and sufficient medical treatment due to the advice of an insurance adjuster and has thereby damaged his or her injury claim and decreased the likelihood of fully recovering from his or her injuries or recovering to whatever extent possible.

SECRET 9: Do not try to hide prior or subsequent injuries.

It is critical that you are honest and upfront with your attorney about any injuries that occurred before or after your accident. If the case is filed, you have an obligation to disclose this to the other side. Essentially, your life becomes an open book when you have an insurance claim. An experienced personal injury attorney will investigate details about your other injuries and make a determination on how best to present your case.

SECRET 10: Keep accurate tax returns.

If you have lost income as a result of your accident, the simplest way to prove the loss is through tax records. However, if your tax returns are inaccurate, or non-existent, then your wage loss claim is in jeopardy. If this is the case, you need to have an honest discussion about it with your attorney.

of you. No matter how understandable or excusable, missed appointments or gaps in your records are difficult to explain to a jury. Worse yet, missed appointments can engender animosity from your own physician, and alienating your doctor can translate to negative information in your medical records, such as the doctor's opinion that your own failure to make your medical appointments. In some cases, a physician state that your failure to undergo certain recommended treatment delayed your recovery or even resulted in a less favorable overall recovery from your injuries. In such cases, the insurance company will argue that you failed to mitigate your injuries, which is your responsibility, and you can be prevented from being compensated for the full extent of your injuries.

SECRET 8: Follow your doctor's advice.

You are not a doctor, and you can't diagnose, document, or treat your own injuries. You need to find a doctor you like and trust, and do what he or she says so that you can get better as quickly as possible. Doing what the doctor says shows that you have a desire to get better. Except under the most unusual circumstances, you should not decline medical treatment, even then, you should only do so following additional consultation with someone who is aligned with your interests.

CAUTION

That "someone" is certainly not the insurance company and its adjusters, who benefit directly from your lack of medical treatment.

Too many times clients have hired me only after they have seriously damaged their case by requesting and taking the advice of an insurance adjuster concerning important decisions about their medical treatment, such as to whether and when to obtain

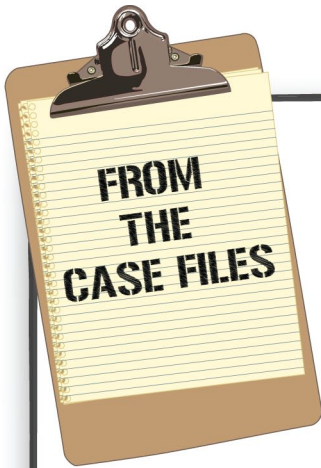
SECRET 6: Do not under report your injuries.

As stated earlier, you must prove every injury that resulted from the accident. This means all claimed injuries must be documented in your medical records by your treating medical providers. Sometimes patients will try to be “tough-guys” and downplay their pain, saying things like “it’s not that bad” or the injury is “minor.” Other times they will not report all injuries. In my experience, some of my clients will minimize their ongoing injuries when their treatment is nearing completion because they are weary of attending treatment and are concerned this will delay their release. Either way, this undermines their case. If you have permanent injuries that will plague you for life, it will be almost impossible to prove if the discharge medical record is inconsistent with that claim. In our profession, there is a saying, “if it’s not in the records then it didn’t happen.” In injury cases, you do not get extra points for being brave! Your medical records will be scrutinized by the claims adjuster and defense attorney. Every pain and every complaint, even if it’s small, needs to be in your medical records to be part of your claim. If it is not in the records, it is difficult to convince a jury that it actually occurred.

SECRET 7: Do not miss doctor appointments or have “gaps” in your treatment.

If you are hurt, you need to keep your appointments. Period. Any time you miss an appointment and it is noted in your records, or you have a period of time where you don’t get any treatment (a gap), it provides an opportunity for the insurance company and its attorneys to suggest that you weren’t injured or hurt, and that is why you didn’t go. All treatment gaps have the potential to harm your claim. Some gaps are worse than others depending on the specific circumstances and how they are addressed in the medical records among other things. Over the course of handling hundreds of injury cases, I have heard dozens of different explanations for treatment gaps and missed appointments. While many of these are probably valid excuses, they are still excuses and do not play well to a jury. They offer a significant opportunity for the insurance company and their attorneys to take advantage

have been in any prior accidents, no matter how minor, and if the case is filed you have an obligation to disclose this information. In most cases, they already know. The insurance industry keeps track of claims in a large database that all companies subscribe to. Giving less than truthful answers or trying to hide your previous accidents or simply failing to remember prior accidents only makes you appear to be less than credible. Even if the prior accident has no bearing on your current injuries, your failure to disclose it negatively impacts your credibility, and your credibility is essential to your case.



I once represented a client who told me that she had never been in another accident before in her life. I asked her on several occasions, and each time she confirmed that she had never been in another accident. During that client's deposition, she was confronted by the insurance company's attorney with a police report from a prior accident and medical records from the treatment she received in that accident. That client had not been upfront with me, so this came as a surprise to me. Had I known about it, I could have protected her or come up with a strategy to minimize the significance. But since the client was caught in a lie, her case was seriously damaged.

opportunity for the insurance company to suggest that you weren't hurt and raise questions about whether you were injured at all.

SECRET 3: Do not exaggerate your symptoms.

One of the most important factors in your case is how you present as a witness. Will the jury or arbitrator believe you and what you say? Your story has to be supported by the evidence in your case. Usually that means that your complaints are in line with the opinions of your treatment providers. Otherwise, the jury may decide that you are faking or exaggerating. A jury will be particularly harsh to a plaintiff whom they perceive to be a “whiner” or who seems to be playing them for money.

SECRET 4: Be totally honest with your attorney.

Nearly every aspect of your life will be examined once you make a claim for bodily injury. This includes your work history, your medical history, your lifestyle, your background, and your family life. Your attorney needs to know everything—the good, the bad, and the ugly. This is not a case of “what you don't know won't hurt you.” I can't protect you from something unless I know about it. The time to find out about a blemish in your work history or a criminal conviction you had or the fact you didn't have a motorcycle endorsement is not when you're being deposed or examined at trial. It is vitally important that you are upfront and honest with your attorney. Defense attorneys will dig for details during discovery and the information will likely come out at some point. Insurance companies have endless resources to find out everything about you. If your attorney is surprised by information that you have not told him, it can negatively impact your case. Fortunately, your attorney will be well prepared and able to deal with that skeleton in your closet or other challenge as long as he or she knows about it ahead of time, at the outset of your representation.

SECRET 5: Do not try to hide past accidents.

Once you begin a case, the other side will want to know if you

In my experience representing hundreds of injured victims, I have learned that there is no such thing as a “perfect” case. Each one has its challenges to overcome and requires hard work no matter the size. I have created this list of secrets that insurance companies don’t want you to know because they are hoping that you will commit one or more of these errors that can wreck your case.

SECRET 1: Get enough information at the accident scene

Failing to get all important information at the accident scene can put your case in serious jeopardy. If you don’t get names and addresses of the people involved, it puts you at a significant disadvantage in trying to determine fault and figure out what insurance might be available. If you fail to get the correct information about one of the cars involved while you are at the scene of the accident, you may never be able to get it again! It is also extremely important to get eyewitness names and contact information because bike crashes often have issues of liability and eyewitness statements are invaluable. If you don’t get their information, you may never find them again. Also, sometimes a surveillance camera will record the incident, or a 911 tape will be made. These tapes are often recorded over within days and the evidence forever lost. Therefore, the sooner someone investigates the accident, the better. It’s important to get photographs of the scene to show where your bike ended up after the accident and any skid marks on the roadway that can disappear within weeks. An early investigation can also reveal debris from the accident that is quickly swept away by traffic. This documentation is vital if the case needs an accident reconstructionist to show how the crash happened. The more time that goes by, the more evidence disappears and is unavailable when needed to support your case.

SECRET 2: Do not wait to see a doctor

If you are hurt, you need to see a doctor. Period. As discussed earlier, all injuries caused by the accident must be proved with evidence. This requires a medical provider documenting your symptoms and recommended treatment. If you delay seeking treatment or help from a medical professional, it provides an

TEN INSIDER SECRETS THAT INSURANCE COMPANIES DON'T WANT YOU TO KNOW

fair resolution. A mediation is held at an office where the parties sit in separate rooms and the mediator goes back and forth between them until the parties either agree to a settlement or give up. Mediation is time consuming, but it can be successful.

Another means to resolving the case is arbitration. Arbitration is conducted through an informal hearing in front of an experienced attorney that allows the parties to present the evidence to support their case. The arbitrator then weighs the evidence and gives an “award.” It is like an informal trial held outside of a courtroom. The rules of evidence are more relaxed and it is much less stressful on the plaintiff than a trial. Arbitration can be binding or nonbinding and the rules of the arbitration determine whether the arbitrator’s decision can or cannot be appealed. If appealable, some arbitration rules are such that the party who appealed must do better at trial than they did at arbitration or they are responsible for paying attorney fees to the other side, which could be considerable. The rules governing arbitration are strict and complicated. They often pose a trap to the unwary, inexperienced attorney.

Of course, the final option for resolving a case is a trial in front of a judge and jury. If the parties agree, they can waive the right to a jury and just have the judge decide everything. Generally, insurance companies will not agree to trial in front of a judge, so when the case goes to trial, it is usually in front of a jury. Juries are unpredictable. Sometimes they give high awards, but usually they tend to be conservative in personal injury cases and not award very much. No attorney can guarantee an outcome in front of a jury and many experienced trial attorneys are surprised by a disappointing verdict. As a result, trial is the last option because of the cost, stress, and considerable risk.

If a personal injury case cannot be settled through negotiations, generally a lawsuit needs to be started. The first step in starting the lawsuit is to file a summons and complaint with the court and then to have the defendant(s) served with the documents. The insurance company will then assign a defense attorney to represent the person who it insures.

In Missouri, a person injured in a motorcycle accident generally has 5 years from the date of the accident to start the case or else it is gone forever. In Kansas, a person injured in a motorcycle accident has 2 years to bring an action. This is called the “statute of limitations” and requires strict compliance. If it is missed, generally you are forever barred from bringing your claim and there is nothing that you, or anyone, can do. Therefore, time is of the essence and failure to comply has devastating consequences. If you decide to hire an attorney, he or she will be responsible for meeting the technical requirements to begin the lawsuit properly, in the right place, against the right parties, and at the right time.

Once this is accomplished, the case enters the “discovery” phase where the parties send written questions to each other called interrogatories. Requests for admissions and requests for production of documents are made as well. Also in discovery, witnesses can be compelled to testify in depositions. That is where the witness is sworn in and gives testimony under oath. It is very similar to testifying in court. In some cases an independent medical examination may be requested. Discovery is the time when both parties have a chance to get an idea of what the other person’s case looks like—the strengths, weaknesses, and legal strategies. This phase can take months to years to complete depending on the complexity of the case and other factors.

After each side has all the information they need, the parties can enter into alternative dispute resolution to try to get the case settled. This process is sometimes voluntary and sometimes involuntary (i.e., court ordered). This can be in the form of a mediation, where the parties hire an experienced attorney or sometimes an active or retired judge to assist them in reaching a

WHAT IS FILING A LAWSUIT?

may value his or her relationship with the doctor over you. Additionally, the insurance companies have computers that keep track of this stuff, and they will know that they can get away with a minimal settlement in these cases.

- Beware of attorneys who try to rush you into signing a contingency agreement without allowing you time to review it in detail and ask questions.
- Beware of an attorney with many paralegals. This can be a sign you will be passed off to a paralegal and the lawyer may not do any work on your case.
- Beware of general practice attorneys. As discussed above, the motorcycle accident claim is a minefield that calls for an attorney who knows how to get you safely to the other side.

The following are some warning signs to look out for in selecting an attorney:

- Beware of “PI mills.” Many large firm personal injury attorneys make their money through high volume and fast/cheap turnover. The cases are often handled by paralegals with the attorney only stepping in when necessary. In some cases, the client never meets the attorney! The business model for these PI mills is to settle as many cases as fast as they can because they lose money by spending more time on a case and would rather not litigate and may not even know how to litigate. It is in your best interest to avoid these large “churn and burn” firms, as their bottom line can be in conflict with your best interests. If the attorney is too busy to meet with you, evaluate your case, or answer your questions in person, that’s a bad sign.
- Beware of attorneys who do not simply provide information and education but rather contact you simply to ask you to sign up with them. In some cases, this can actually be illegal!
- Beware of attorneys who promise or guarantee you an outcome in your case.
- Beware of attorneys who don’t have experience in handling motorcycle accident cases.
- Beware of attorneys who have a collection of doctors to whom they will refer you. Generally these attorneys use the same doctors over and over again, and may get thousands of dollars in fees from the referrals. As a result, the attorney



FACTORS TO BEWARE OF

- Experienced attorneys will know the medicine behind their clients' injuries. Soft tissue injuries can produce a number of varying diagnoses and prognoses. An insurance company might use their own "independent" (these guys aren't really independent) doctor who has a different professional opinion from the treating providers. An attorney must understand how to explain to a jury why the rent-a-doc's opinion isn't credible and shouldn't be given any weight.

Lastly, find an attorney you like.

Believe it or not, personality counts! You are about to go through a journey with your attorney, and it is crucial not only that you like him or her but that you trust what he or she is going to tell you. Before you even consider hiring an attorney, you should sit down with him or her in a FREE consultation with no obligation and determine for yourself whether you like and trust him or her. Only then does it make sense to consider proceeding together.

other attorneys. The teaching attorneys often will have written articles or other materials for the seminar. That an attorney has been asked to speak to other attorneys or has written on the subject are factors to consider in assessing his or her credibility. Do you have experience handling my type of case?

There are many general practitioners who can draft wills, settle contract disputes, and set up corporate entities, but they probably don't regularly handle personal injury cases. **It is my recommendation to find an attorney whose practice is devoted to 100% personal injury cases. This is true for a number of reasons:**

- Insurance companies keep track of attorneys they regularly deal with and may evaluate a claim higher because they are dealing with an experienced personal injury trial attorney. He or she may tip the scale on whether the insurance company decides to settle or push a case to trial. Even though most personal injury cases settle, an insurance company has no motivation to offer a decent settlement if it thinks that it will do well at trial because the attorney you've hired doesn't know what he or she is doing or hasn't properly protected your rights or documented your claim or will settle low to avoid going to trial.
- An experienced injury attorney will know the local defense counsel and how he or she generally handles cases and conducts trials. If an attorney has never been to trial or folds immediately before trial, the insurance company may note this and evaluate the claim lower.
- Insurance companies frequently change their tactics and strategies and combating them requires constant vigilance. An attorney who focuses on personal injury will keep abreast of these policies and procedures and know how to combat them.
- The law is constantly changing. An attorney must stay on top of all of the changes to know how the law could affect your case.
- An attorney experienced with motorcycles and motorcycle cases will best understand how to proceed with your case.

there. I have years of riding experience, and I understand the joy and fear associated with being on a bike.

What is your training after law school?

Has the attorney completed any advanced courses in trial work or strategy? Has he or she completed any nationally known course work to hone skills? An attorney dedicated to the craft will have taken additional courses that aren't required so that he or she can get justice for clients.

Who in your office will actually be handling my case?

I don't know about you, but I want the person I meet with and decide to hire to actually work on my case. Many lawyers have "case managers" or paralegals who do much of the work, and the attorney only jumps in from time to time when needed. In my office, if you hire me then you get my involvement, from start to finish.

Do you have experience with serious injury cases?

Your attorney should have experience handling cases with the type of injury that you have suffered. There are many types of injuries and your attorney needs to understand the intricacies of your particular injury and know what experts are needed to help prove the injuries and damages aspect of case, which is often the most significant factor in obtaining just compensation on your behalf. Additionally, with serious injury cases, it is crucial to understand and be able to effectively convey how those injuries will impact the rest of your life.

Have you won any large verdicts or settlements?

If you are seriously injured, you do not want to hire an attorney whose practice consists of handling small fender benders. You want someone who is up to handling your case.

Do you teach other attorneys or have books or other writings?

Some attorneys who are well respected in the legal field are asked to speak at Continuing Legal Education seminars to teach

This is a tough question. Unless you are in the legal profession, or have seen a personal injury attorney in action, how would you really know who to hire to represent you? There are many factors that you should consider when choosing an attorney to handle your case. These are a few questions to get you started:

How long have you been practicing personal injury law?

There are many attorneys who try to dabble in doing personal injury cases. They think these cases are easy. They are wrong. Their involvement can be detrimental to their clients. Just like I wouldn't try to handle someone's real estate case, other types of lawyers may not be as proficient in personal injury law unless they have committed their careers to it. Do you want them learning on your case?

Do you have experience with motorcycle cases?

Motorcycle cases have unique issues. The at-fault party may be obvious, but as we discussed, the insurance company will always try to make it an issue and without experienced motorcycle attorney representation will have a better chance of minimizing or destroying your claim. It takes a savvy attorney to know how to properly analyze and document liability, find the people who are responsible for your crash, and figure out how to prove it to a jury. As I mentioned earlier, juries can be biased against riders and it takes an experienced attorney to know how to present your case to a jury to combat their bias. Damages in a motorcycle case can also be specialized and are not always obvious. In short, you need someone who has been there and done that.

How much experience do you have with motorcycles?

There are certain things that we can only learn by doing. You don't want a lawyer learning the ins and outs of motorcycles by wrecking your case. You need a lawyer who knows the difference between the clutch and the front brake. You want a lawyer who has had some time in the saddle. Literally. I believe that I am better able to understand what someone who has been in a motorcycle accident is going through, because I have been

HOW TO CHOOSE THE RIGHT ATTORNEY FOR YOUR CASE

- Prepare you and your treatment providers for deposition.
- Retain necessary experts, medical and otherwise.
- Conduct depositions of the other party or other witnesses.
- Prepare and implement a winning strategy for your case.
- Review and analyze medical records.
- Depose the other side's experts.
- Prepare and respond to any motions and attend any court appearances required to argue the motions.
- Prepare our case for trial.
- Prepare for and attend arbitration hearing, mediation, and/or trial.

This list is not every possible thing that I may do on your case, but it gives you a general idea. It is important to note, however, that most cases do resolve short of trial. In my experience, the earlier I am involved and protecting the rights of an injured victim, the more likely the case will settle for value without expensive and time consuming litigation and trial. That is because trial is risky for everyone. However, the only way to get the best result is to prepare every case as though it will go to trial, and stand ready to back it up if the insurance company won't make a reasonable offer.

- Review subrogation issues to determine what claims for reimbursement for medical expenses paid and other expenses such as wage loss paid must be satisfied and to what extent and what claims do not need to be satisfied.
- If you are unable to work, assist you in filling out forms to properly replace your wage loss.
- If medical payments coverage or personal injury protection coverage is available to pay for wage loss or medical bills, make sure all the proper documentation is submitted and that the insurance company pays fully and on a timely basis.
- Analyze and discuss settlement offers with you in detail and answer all of your questions regarding whether to settle, and the benefits and potential risks associated with litigation.
- Allow you to make a well-informed decision about whether to take a settlement or whether to continue to trial.
- Determine if we require additional experts, medical and otherwise, to prove your case.
- Negotiate with the insurance companies.

If we are unable to resolve your case and we need to file a lawsuit, I will undertake some or all of the following activities:



- Prepare the Summons and Complaint.
- File the lawsuit.
- Locate and serve with process all required parties.
- Engage in discovery, submitting questions for the defendant to answer and answering questions defendant asks of you (including objections).
- Draft and serve Requests for Admission.

Being in an accident is one of the most stressful and difficult experiences a person can go through. It is all confusing new territory for most people. The aftermath of an accident entails one hassle after another—getting your bike fixed, going to the doctor, phone calls from adjusters, getting prescriptions, missing work, not to mention your pain and suffering.

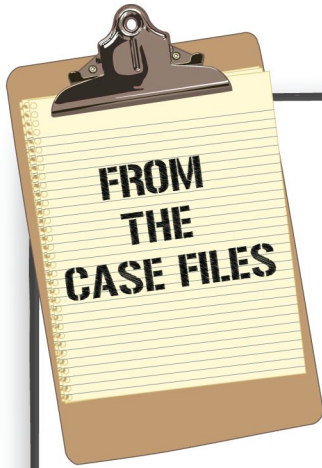
Here are all the things I do for my clients:

- Offer peace of mind in knowing that I (not a “case manager” or a paralegal) am representing you.
- Protect your rights and do everything I can to bring about the best result for you.
- Provide personal service for you. You are a person, not just another case or a number. I will listen, and treat you with respect. See our many client testimonials to that effect ... www.kansascityaccidentinjuryattorneys.com/testimonials.cfm
- Keep you informed of what is going on and let you know what to expect at each stage.
- Give you peace of mind in knowing that if you are not treated fairly by the insurance company, then I will do whatever it takes to get you justice.

There are many ways that I go about providing you with those intangibles:

- Educate you about your claim and answer questions.
- Obtain and gather documentation about the claim.
- Review the facts of the case to identify all potential at-fault parties.
- Review and analyze all possible layers of insurance coverage for the accident.
- Interview witnesses.
- Investigate the scene of the accident (take pictures and gather other physical evidence).
- Evaluate legal issues surrounding the facts of the accident.
- Speak with your treating physicians about your medical conditions and recommended treatment plan.
- Review available insurance, such as health coverage, medical payments coverage (MPC), and personal injury protection (PIP) to determine if bills can be paid while you are treating.

WHAT A MOTORCYCLE ACCIDENT ATTORNEY CAN DO FOR YOU



Adjuster X went to the home of an insured who had been hit head-on by a drunk driver. The drunk driver didn't have any insurance of his own, so the insured was going to make a claim under the uninsured motorist portion of his policy. In Missouri and Kansas, it is against the law for an insurance company to raise your rates for making a claim when the accident was not your fault. This covers Medical Payments Coverage, Personal Injury Protection, Underinsured Motorist, and Uninsured Motorist claims. Adjuster X convinced the insured that the only way to punish the drunk driver who injured him was to settle his claim with his insurance company for \$1,500, so that his insurance company could then go after the uninsured drunk for that amount. Of course, this was not true. What happened is that Adjuster X got the victim to accept \$1,500 as a full settlement when in fact he was probably entitled to the \$25,000 policy limits that he carried since he had over 60 stitches on his face and would be permanently scarred.

Before making your decision, keep in mind that a recent study performed by the Insurance Research Council found that insurance companies pay much higher settlements to injured people who are represented by an attorney than unrepresented people. The IRC is a non-profit organization supported by leading property and casualty insurance companies in the United States. The IRC found that people who have an attorney received, on average, 3 ½ times more money in settlement than those individuals who settled their own claims. While one of the tactics insurance adjusters often use in an effort to convince accident victims to not protect their rights is to tell accident victims that they should not hire an attorney because they will receive less money, this is simply not true.

and trust the most.

However, if you have a small case with small damages and minor injuries, it may not make financial sense to hire an attorney. This is partly because when an attorney takes your case there are certain things that need to happen. For example, an attorney will order all of your medical records. There is actually a state law that dictates how much medical providers can charge for the privilege of copying their records, and it isn't cheap! Sometimes these, and similar other costs, will amount to more than you could get even if you had an attorney. All reputable motorcycle injury attorneys offer a free consultation and it is smart to take advantage of this service. You have everything to gain and nothing to lose by getting professional advice as soon as possible concerning your injury claim.

If your case involves complicated issues, such as significant injuries, then it is usually prudent to hire an attorney. The attorney will know how to deal with complex liability issues or complicated medical opinions. He or she also will be familiar with the tactics used by the insurance carrier and know how to protect the client from being taken advantage of and be able to prevent the client from having his or her claim minimized or destroyed. Ultimately, that knowledge and expertise will result in a better outcome.

Here are some arguments the insurance company will attempt to use to justify paying out as little as possible on your claim:

- It was the motorcyclist's fault
- Minimal damage to the bike in the accident
- Weight problem of the injured person
- Too little treatment
- Too much treatment
- Pre-existing injury to the same part of the body
- Gaps in treatment
- Too many prescription medications
- Use of alternative care (chiropractic, acupuncture, naturopathy, etc.)

Despite how complicated bike crash cases can be, not every case calls for an attorney's expertise. There are several categories of cases where it would likely cost more to retain an attorney than it would be worth. This is true if the injuries are minor, require only minimal treatment, and are not permanent. In these instances, the damages may be minimal and it may not be cost effective to hire an attorney.

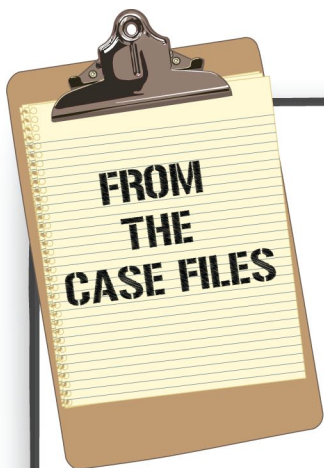
Personal injury attorneys generally work for a contingency fee. This means that the attorney doesn't get paid unless he wins your case, and the amount he gets paid is based on how much he gets for you. Retaining an attorney will require that you sign a retainer agreement, which is just a contract that outlines what the attorney will do for you, and how much it will cost. These agreements are not standardized so it is extremely important that you thoroughly read and understand every provision in a retainer agreement before signing it.

CAUTION

Never sign a contract that you don't understand. If there is a part of the retainer agreement that doesn't make sense, ask the attorney to explain it to you. If he can, then have him change the contract so that it says what it should say in plain English!

That said, a contingency fee agreement works in the interests of both parties—it gives the attorney incentive to work hard on the case and recover as much as possible while it reduces the risk to you if there is no recovery on the case. Another huge advantage of the contingency fee contract is that you are not limited in how good of a lawyer you can hire, even if you don't have any money. You can still shop around and hire the person that you respect

**DO YOU REALLY NEED AN
ATTORNEY?**



Adjuster X received a call from one of the truck companies that his insurance company insured. They had just been in a wreck where the truck driver had hit a school bus full of kids. Adjuster X immediately went to the scene of the accident, and settled the cases of over 30 children for \$500 each. He just had the parents sign a release.

Nobody realized that sometimes it takes days for symptoms to set in. But, for those unfortunate kids, no matter how badly injured they were, they would never get another dime.

These are just a few of the tactics that the insurance industry uses to fatten the pockets of their CEOs . The average person who happens to be in a motorcycle crash would have no way of knowing about these tricks and tactics, and the insurance companies take advantage of the lack of knowledge when the individual doesn't have a lawyer. In some cases, the adjuster will insist that the claimant is required to participate in an examination or give a recorded statement even if this is not true.

It is possible to fight back against the insurance company, but it requires an experienced motorcycle accident injury attorney to know how and when to protect a client from all of the traps.

will often find there were no injuries or limit the injuries caused by the accident. Some company experts are so biased that the content of their report can be almost fully predicted before it is received.

Independent Medical Examination

If your case goes on long enough, the insurance company may ask you to go see a doctor of their choosing. They tell you that it is so that they can make sure all of the care you're getting is what you actually need. In reality, it is a hatchet job from the beginning. Remember the doctor who makes a lot of money doing records reviews for the insurance company? This guy makes even more money doing exams, then writing reports saying that you aren't hurt.

Secret Surveillance

Insurance companies are using surveillance of claimants more and more to try to undermine the existence of injuries. They will record you going to work, going to the grocery, running errands, or going to the gym, to try to catch you in a lie. If they can't catch you lying about the extent of your injuries, then they will use the surveillance to prove that you were not limited by your injuries.

is a prime opportunity to convince the victim to sign a release, or at least to sign forms turning over medical records and give statements about the facts of the accident and their injuries. **The insurance company's objective once you open a claim is to underpay it by as much as it can get away with. This can be accomplished by:**

Quickie Low Ball Settlement

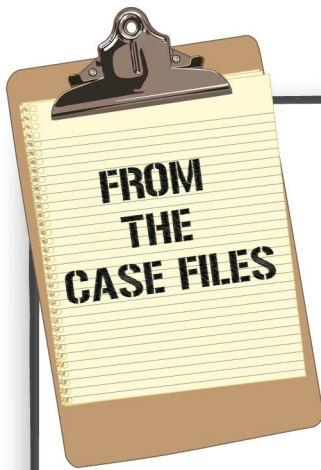
This is the oldest trick in the book. The insurance adjuster will be very friendly and offer you an amount just to wrap this whole thing up right away. The quickie offer typically varies from a few hundred dollars to a couple thousand. The bottom line is that the insurance companies know that if they get you quickly before you speak to an attorney, they can get away with paying a whole lot less.

Recorded statement

An adjuster will request a recorded statement shortly after an accident to get you to commit to a version of the story and document your injuries. This is dangerous for two reasons. First, they will try to manipulate you into describing the accident in a way that puts liability in question, or diminishes the damages. This will be used against you if facts change after the statement was taken, even if it is months or years afterwards. Second, at the time when you give the statement, it is possible that all of your injuries haven't shown up yet. For example, in most cases where surgery is required, it usually isn't performed until months after the accident. If you settle right away, then you've given up the right to have the surgery or additional injuries included in the settlement.

Records release and review

An adjuster will request you to allow the company access to your medical and/or employment records before and after the accident, and then send the records to a specialist (who makes a lot of money working for that insurance company) to review and give an opinion whether you were injured and whether the treatment was reasonable. As can be expected, the specialist



A personal injury attorney friend of mine relates this story of insurance company bad behavior:

Adjuster X used to work as an insurance adjuster before he woke up one morning and decided he could no longer work for the dark side. He agreed to share some of his stories.

Introducing "From the Case Files," a true example of insurance company bad behavior.

According to adjuster X, in his training with his insurance company he was taught a certain set of rules for dealing with motorcycle accidents. **ADJUSTER X WAS TAUGHT TO ARGUE THAT EVERY MOTORCYCLIST IS PARTIALLY AT FAULT** (just for being on a bike)! If there wasn't an obvious way to try to (at least partially) blame the motorcyclist, then he would have to be creative and invent a reason why the accident was the fault of the injured motorcyclist. He would argue that the pipes were too loud, or that they weren't loud enough, or even that the rider should have just taken a bus that day. Ridiculous? Yes! True? Yes. A successful strategy for the insurance company? Sadly, more often than you think!

The first person we begin dealing with at the insurance company is the claims adjuster. The claims adjuster's overall job is to get you to sign a full release of all your claims for as little money as they can get you to accept. The adjusters have many strategies for accomplishing that. The best way they can get you to accept less money is to search out and find as many weaknesses in your case as they can. However, the best way the insurance company knows to get you to accept as little as possible is to offer it to you quickly. The insurance company knows that most claimants will not be represented by an attorney right after an accident and it

Ask any insurance company CEO what the main goal of his company is, and he'll tell you it is to make a profit for his shareholders. Not to treat injured victims fairly! If you've been injured in an motorcycle accident, I've got news for you...YOU ARE IN FOR A FIGHT! When it comes to being fairly compensated for your injuries and damages

- You are **NOT** "in good hands" with Allstate
- Like a **BAD** neighbor, State Farm is there
- Farmers will get you back to where **THEY** think you should be

Most of the time, motorcycle injury claims will be covered by the auto insurance of the person who caused the accident (there are many types of insurance coverages, here we are discussing liability coverage). However, just because you were injured and deserve to be made whole does not mean the insurance company is going to gladly give you any money. Insurance is a multi-billion dollar industry. Insurance companies are in the business of making money (by taking in premiums) and holding onto it as long as possible (so that they can invest it and earn even more money). Insurance companies do not like to pay claims, because that takes cash out of their pockets. Therefore, in the interest of corporate profits, insurance companies carefully scrutinize each and every claim and try to pay as little as possible. Its nothing personal and it has nothing to do with the merits of your claim. In the interest of additional shareholder profits, they will minimize and destroy your claim whenever possible.

The overarching tactic the insurance companies use is called "The Three Ds" - deny, delay, and defend. They will **DENY** that the accident is their insured's fault, or that you were injured. They will **DELAY** giving you any money for as long as possible (assuming you don't take the "quickie settlement"). Lastly, they will aggressively **DEFEND** any claim you make, even forcing you to go to trial.

GET READY FOR A FIGHT!

As you can see, a personal injury case is not as straightforward as Judge Judy may make it seem. Properly handling a motorcycle accident case requires a thorough understanding of Missouri and Kansas law along with a solid understanding of motorcycles and those who ride them. Often times an expert witness called an accident reconstructionist must be hired to help show that the motorcyclist was not at fault. Proving causation can often be a major battle where your doctors have to fight with the insurance company doctors. Winning your case requires an understanding of technically complex medical records, knowing what documents are needed to prove what claims, and knowing where to get them, then being able to communicate all of that clearly and effectively to a jury.

costs of prescription medicines). General damages are less exact and more “touchy feely.” For instance, they can include pain and suffering and loss of enjoyment of life, and other categories that are all hard to put rock solid numbers on.

In my experience, bike accidents often have large damages because being in an accident on a motorcycle usually results in much more severe injuries. Also, some riders say they never want to ride again. Some say they get scared every time they get on their bike (in medical terms, this may be considered a form of post-traumatic stress depending on the circumstances). These are all types of damages. And in motorcycle cases, the general damages are different than they are in a car accident. An attorney who has ridden a bike and has handled motorcycle accident cases brings this important additional experience to the table along with whatever other personal injury experience he has to help him understand how to put a successful bike case together. There are no guidelines on how to place a value on general damages. Instead, the compensation is based on what damages a jury might find if they heard the case, which is highly subjective and can vary widely from jury to jury. The unfortunate reality is that juries can be biased against motorcyclists. But a good attorney knows how to present his or her client to the jury to overcome many of the biases people have about bike riders.

All damages require evidence. They aren't just going to take your word for it! Usually injuries are documented through medical records a treatment provider creates. Each time you visit a medical provider, he or she will document your medical history (what you say happened to you), your complaints, objective findings (things that can be directly observed, such as broken bones), diagnoses, and recommendations. Typically, the records contain medical terminology and shorthand. Evidence may also be found in places other than medical records such as employment records, school records, and even with friends and family. It takes expertise to know where to look for the best evidence that will document the necessary facts to prove a case.

person on the motorcycle because they believe that juries will think that someone on a motorcycle is aggressive and must have done something wrong. For example, in my brother-in-law's case the insurance company initially attempted to deflect liability for its insured's actions, claiming that its insured driver was turning left and that the accident occurred because my brother-in-law was attempting to pass in the center lane. Through thorough investigation including site investigation and witness interviews, we were able to prove that its insured driver was 100% at fault for the collision, which made all the difference in the end result.

In other motorcycle and motor vehicle cases I have worked on, the insurance companies have made questionable claims of comparative fault against the cycle rider or lack of fault of their insured driver in an attempt to avoid paying compensation for injuries and damages caused by the negligence of their insured. Since a motorcyclist bringing a claim for injuries has the burden of proof, many of these insurance company defenses, even some that are seemingly absurd, can be difficult if not impossible to overcome unless contradicted by clear documentary evidence obtained through hard work, including site investigation, witness interviews, and more. Insurance companies will only pay fair compensation when confronted with compelling documentary evidence that a jury will find against their insured driver at trial. Accordingly, it is only when we confront the insurance companies with solid documentary evidence supporting liability in these motorcycle and motor vehicle claims that we are able to overcome insurance company defenses and achieve good resolutions in these motorcycle and other motor vehicle cases.

After the question of liability is answered, the next step is to determine damages. Damages are the money that can make up for, or compensate for, the injuries that were caused by the negligent conduct. This is where the rubber meets the road in a personal injury case. In Missouri and Kansas, there are two types of damages—special and general. Special damages are also called economic damages. These are things that can be proven with bills, invoices, and receipts (for example, medical bills, or the

A motorcycle injury case arises when someone suffers a physical or mental injury as a result of someone else's negligence while riding a motorcycle. Negligence is a legal term that means that someone's conduct fell below the standard of care for a reasonable person in a similar situation. The standard of care varies from situation to situation. Missouri imposes the highest degree of care in every driving situation.

People are negligent when they do something they shouldn't have done, or when they don't do something they should have done. For example, making a left hand turn or a U-turn directly in front of a motorcyclist who has the right of way is probably negligent.

Liability, or who is at fault, also changes from situation to situation. Missouri and Kansas have numerous statutes and codes that determine the standard of care to which an individual is held. When driving, these are called the Rules of the Road. They establish who has the right of way in certain situations, who must yield to whom, and how drivers must interact with each other. A motorcycle is considered a motor vehicle and a rider must obey the rules of the road.

Determining the party who is at fault is dependent on the facts leading up to the accident. For instance, if a driver was running an errand for an employer at the time of the accident, the employer might be liable for the driver's actions as well as the driver. However, if the driver decided to make a personal detour while running the errand, then the employer may not be liable. The variations are endless. The question of liability is one of the first important considerations in a motorcycle injury case and often times is not "cut and dried" but requires technical analysis.

Liability just means whose fault the accident is. Unfortunately, liability, as with most parts of the law, is very complicated once people start arguing over something. Even cases that people think are "slam dunk" on liability sometimes aren't. This is an even bigger problem for motorcyclists, because insurance companies will almost always try to assign some blame to the

WHAT IS A MOTORCYCLE INJURY CASE?

Fees

Class M fees are in addition to regular license fees. The Class M fee for any 4 year license is \$9. The Class M fee for a 6 year license is \$12.50.

For additional information, the Kansas Highway Patrol has a motorcycle facts page.

- Daylight driving only

The cost of the permit is \$1.00. If you apply for a license or a permit at a fee license office you will also pay a \$2.50 handling fee.

If you do not already have a driver's license, your permit will be Class F permit with a Class M endorsement.

Instruction permits are valid for 6 months.

Skills Testing And Licensing

Then, once you are ready, you can take the motorcycle knowledge and skills (road) tests. You may either take the test through the MSHP or through your rider training course. Knowledge test questions are based on information covered in Motorcycle Operator Manual. The on-cycle skill test will either be conducted in an actual traffic environment or in a controlled off-street area.

License Fees

- 3 year Class M motorcycle license: \$10
- 6 year Class M motorcycle license: \$20
- Handling fees may also be charged

IN KANSAS

In Kansas you will need to have a Kansas driver's license before you can add a motorcycle endorsement to your license. Once you are ready to take the tests, you must present proof of identity at any Kansas driver's license exam station, and pass a vision test, a motorcycle written test, and a skills test. The Kansas Motorcycle Operator Manual provides the information you will need for the knowledge test.

If you have successfully completed an approved motorcycle driver's education course, you can present your completion certificate instead of taking the on-cycle road test.

(see below). By law, your motorcycle may be impounded if you operate it without the proper endorsement.

IN MISSOURI

The state of Missouri requires either a Class M motorcycle license or permit or a driver's license with the M endorsement in order for you to operate a motorcycle or motor tricycle on public roadways.

Missouri Motorcycle Instruction Permit

Applicants Younger Than 16

You must be 15 ½ years of age to apply for a motorcycle instruction permit. This permit will only be issued if you have successfully completed an approved motorcycle rider training course (MRTC). You must also pass the Class F and Class M written vision and road sign tests, and have written consent of your parent or legal guardian if you are a minor.

If you are younger than 16, the following restrictions apply

- Cannot ride a motorcycle with an engine with a displacement of 250 cc or more
- Cannot carry passengers
- Must ride within 50 miles of your home
- May only drive during daylight hours

A motorcycle instruction permit costs \$3.75 if you are younger than 16; \$2.75 goes to the training course

Applicants Ages 16 And Older

If you are 16 years of age, you can apply for a motorcycle instruction permit without taking the motorcycle rider training course. You will still need to pass the vision screening, road sign test, and Class M written test in order to get a permit.

All Missouri motorcycle instruction permit holders have the following restrictions:

- No passengers

Riding a motorcycle on the open road is one of the great joys in life. But as you know, sharing the road with cars puts you at risk—you are virtually invisible to all those driving cars. Motorcycle registration has sharply increased in Missouri and Kansas in the last decade and a study done by the Motorcycle Rider Safety Task Force shows that motorcycle fatalities are also rising. In Missouri, the helmet law in effect since 1967 resulted in a reduction in fatalities, but motorcycle fatalities in Missouri and Kansas are now steadily rising. Serious motorcycle traumas have been steadily increasing as well.

The study also discovered some surprising facts:

- Most motorcycle fatalities occur during daylight hours in dry weather;
- More than 80% of fatalities occur between April and September, which are the prime months for riding;
- The most common contributing factors to motorcycle fatalities are lane error, speeding, alcohol and inattention;
- A third of motorcycle fatalities involved motorcyclists who didn't have a valid motorcycle endorsement;
- While many fatalities involve young men, fatalities are also distributed among all age groups;
- Most fatalities involve men. In the last decade, the proportion of male to female fatalities was seven to one.

As you can see, if you ride, there's a definite chance that you may be injured. It's extremely important that you receive proper training on riding and educate yourself about the laws and requirements in Missouri and Kansas. Below are a few rules to get you started.

Motorcycles are required to observe the rules of the road, just like cars and other motorized vehicles. Headlights and signals are mandatory in Missouri and Kansas. Helmets are mandatory universally in Missouri and for those under the age of 18 in Kansas. A motorcyclist must have a special license or endorsement on his or her driver's license to operate their bike in Missouri and in Kansas

THE RISKS OF RIDING A MOTORCYCLE

In my experience, unfortunately, that feeling of confusion often occurs even when someone has an attorney. This is because nobody ever takes the time to make sure that they understand. Their lawyer seems to speak in a different language, and never checks in to be sure that the client understands what is happening. Despite the way it looks on TV court shows, motorcycle personal injury claims are very complicated. Even more complicated than car accidents! If it's not an issue of fault, then it's an issue of injuries, or what caused the injuries. Injury cases require an intelligent, compassionate, dedicated, and experienced attorney who understands the intricacies of riding a bike and representing an injured client. Motorcycle cases have unique issues that only a person who has ridden and handled these types of cases fully understands.

When it comes to an attorney, book smarts aren't everything. What is equally important is an ability to communicate with and educate the client so he or she understands the process, the claim, and the strengths and weakness of the claim. Without effective communication, injured people are hardly better off than representing themselves in small claims court, because they will not understand the crazy and complicated game in which they have now become unwilling players.

While it may sound cheesy, I became a lawyer to help people. I have focused my career exclusively on helping injured people with their personal injury cases—mostly motorcycle crashes and car crashes. After years of helping injured people, I have learned the ins and outs of getting justice and fairness for my clients, and it is my greatest pleasure to share my knowledge with my clients, and with you.

What people who have been injured need are straight answers about their case. They don't need empty promises or highly technical legal mumbo-jumbo. They need to know what to expect, what to do, and how to do it. I consider it my calling and my obligation as an attorney to share what I have learned. To do anything less is a disservice to my clients and all others who need help.

answers to these questions have been hidden away from you and the rest of the public. Some attorneys know, but they won't tell you....unless you hire them. And even then, they are not going to tell you enough so that you can actually handle your own case. But what is worse than that is that many lawyers out there who hold themselves out as knowing about motorcycle accidents have no personal experience. They've never ridden a bike...they've probably never even sat on one!

All of that is about to change. I believe that you deserve to know. I believe it is a lawyer's duty to assist the public by giving people good, usable information. Most of all, I believe in giving it to you straight. I'm not going to sugarcoat things, or dance around issues. I will always tell you what I think. Just to prove it, I'll tell you something that other lawyers will hate to hear me say. As you will discover when you read this book, you may not need to hire an attorney for your case. In fact, it could even wind up costing you more!

I understand what surviving a motorcycle crash is all about because I ride bikes myself and I've been there to assist others who have survived motorcycle crashes, every step of the way, including a loved one from emergency room to compensation. I know what you are going through. I've been in your shoes.

REAL LIFE AIN'T JUDGE JUDY

We've all seen a daytime courtroom show where someone has been injured in an accident and is suing the person who hit him or her for money. Those shows are modeled after small claims court. In small claims court, there are no attorneys. The celebrity judge will listen to each side's testimony and give a quick verdict (in the form of money) to one side or the other. The judge hands down some ruling without explanation and afterwards the parties will talk about their frustration or confusion. The parties are confused because nobody ever explained the process to them, or what they could expect, or how the law worked, or even the nuts and bolts of what goes on in the courtroom.

INTRODUCTION

A MOTORCYCLE ACCIDENT IS NOT A CAR ACCIDENT

Common sense, right? But for most lawyers, that simple fact is far from common sense. Most lawyers don't know what it is like to be riding down I-35 with nothing between you and the pavement except a layer of leather. Most lawyers don't know what it is like to be heading down the road hoping that the car on the side street doesn't pull out in front of you. Most lawyers don't know what it is like to see a loved one in the wake of a serious motorcycle crash because some idiot wasn't paying attention.

I DO KNOW

I've been a rider most of my life. I know the thrill and the dangers of riding motorcycles. I've visited my brother-in-law in the emergency room, bloody and seriously injured from a motorcycle crash. He was traveling down the road at 40 mph when an SUV made a U-turn directly in front of him. With no time to react, his bike struck the side of the SUV and he flew off his bike and smashed head first into the side of the SUV. No question about it ... he was hurt. His face was gashed. He had internal injuries. His back was hurt. But he was lucky. He survived without serious permanent injuries. He was full of road rash, badly scarred, and had months of rehabilitation ahead of him, but he was not seriously maimed or disfigured thanks to a helmet. With time, he would be okay, which is more than he could say for his bike.

Then came the questions racing through his mind. How do I know which doctor to go to? Who is going to pay all these expensive medical bills? How will I get my bike fixed? What should I do when the insurance company calls me? Who is going to pay for my missed time from work? How will I put food on the table? How will I take care of my family? What if I can't go back to work? What if I'm never the same again?

If you've been injured in motorcycle crash, undoubtedly some of these questions are the ones that are keeping you up at night. You deserve answers to all of these questions. For too long, the

ABOUT THE AUTHOR

James Roswold is a Kansas City based personal injury attorney. His law firm, Kansas City Accident Injury Attorneys, represents all kinds of accident victims including victims of motorcycle wrecks. James is an experienced litigator who chose to open a small law firm in order to provide accident victims with personal, one-on-one representation. He writes articles, newsletters, and eBooks as a public service, and to further fulfill his passion of educating accident victims, whether or not he represents them in court.



James is a 1990 graduate of University of Iowa College of Law. He has served the people of Kansas City for many years and continues to advocate for the rights of the injured.

Foreword

Over the past 30 years that I've been in the motorcycle business in the Kansas City area, I've had the pleasure to meet thousands of riders, and I've come to learn that owning and riding a motorcycle and being a part of the local KC motorcycle community means something different to every rider. Whether the rider's interest is casual riding, touring, attending motorcycle rides and events, hitting the biker bars, racing, customizing, or jumping, everyone seems to have their own passion for motorcycling and reason for loving his or her bike.

Now there's an exciting two book collection that has something for just about every KC rider, written by local KC motorcycle enthusiast and veteran rider, author and attorney James Roswold!

The Kansas City Biker Bible covers everything from great rides to local and national motorcycle events, local biker bars, magazines and other biker resources like dealers, painting and customizing, renting and leasing, repairs, supplies, parts and accessories, and performance racing equipment and service in the Kansas City area and beyond. The KC Biker Bible, written by a KC rider for the KC rider, even has a humorous biker's dictionary defining some of the most colorful rider's vocabulary, providing pure entertainment and a good laugh.

The Devil's Advocate educates the Kansas City rider on how to protect his or her rights and provides essential information about motorcycle law and motorcycle insurance. Whether the KC rider's need is for more serious motorcycle related information or just for fun, when armed with The KC Biker Bible and The Devil's Advocate the rider has everything they need!

But what really inspires me about James Roswold is that he gives back to the Kansas City community. When he is not riding, James can be found singing and playing his guitar with The KC Biker Band, at festivals and bike shops throughout the Kansas City area, providing Kansas Citians with a rocking good time while raising money for kids through The Roswold Foundation For Injured Children.

■ Ron Rogers, CR Cycle Tires, De Soto, KS

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Devil's Advocate

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"A must-read for motorcycle enthusiasts new and old. James Roswold's Biker Bible is chalk full of valuable information for riders wanting to protect themselves on and off the road."

Andrew S. Talge
Attorney and 2008 Harley-Davidson Street Glide Rider

"If you don't need this information today, you may need it tomorrow. This book has great tips in the event of an accident and is a must have to protect your injury claim."

Stewart A. Carpey
Philadelphia Attorney

"The KC Biker Bible is a comprehensive "go to" resource for bikers located in Kansas City and throughout the country. Consistent with James Roswold, Esq.'s community first focus, the KC Biker Bible includes great informatino about biker rights, biker safety, biker bars, great rides, and the overall biker community. James has created a lifestyle and resource guide for all bikers."

Charles Internicola
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