



By David Lee Wells

LAW 4 BIKERS



MORE MONEY IF A CO-WORKER INJURES YOU (Work Comp)

A very important fact in a job related injury is whether a co-worker caused or contributed to your being injured. An example is a recent case in Kansas City the co-worker lost her grip on a high pressure hose and blinded the worker in his right eye. Under Missouri Workers Compensation Law the injured worker would receive compensation based upon the formula for losing an eye. The value of the claim is based upon the number of weeks an eye is worth 140 weeks (the whole body is worth 400 weeks) x the compensation rate (salary) the injured party is not allowed to claim all of his damages, such as pain and suffering, lost wages, total effect of blindness in an eye on future employment, loss of service and companionship to a spouse, etc. There are many jobs

that two good eyes and depth of field is important such as a pilot, truck driver, technology, assembly, police work, etc. Also you could not claim loss of enjoyment for things you like to do such as; tying flies, hunting, shooting, crocheting, knitting, etc. These damages are traded off under the Workers Compensation Law for the benefit of the employee being able to recover when it's his fault that he got hurt and for the right to immediate and complete medical care for the injury. For a working guy getting to a good hospital and having the best doctors gets him fixed and back on the job so he can feed his family is very important.

Under the old law a co-worker who caused an injury could not be sued, except for something more than the employer failed to provide

a safe place to work.

Why would you want to make a claim against a co-worker? Because if you can make a claim the claim would be outside the confines of the workers compensation law and you are entitled to a full recovery. A full recovery could mean the difference of getting \$5,000 to \$10,000 for an injury under Workers Compensation Law and \$100,000s outside the Workers Compensation Law in a general civil court. In Workers Compensation a judge hears the case and he is limited in what he can award but in Civil Law a Jury of 12 people from your community gets to decide how much you are hurt and how much you should be compensated.

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St. Louis Motorcyclist Settles for \$6.5 Million

The truck driver said the motorcycle was stopped on the highway for no apparent reason when he hit the bike from behind. The injured biker had no recollection of the accident due to a brain injury. The medical damages were over \$300,000 and lost wages of \$500,000, the trucking company filed for Bankruptcy shortly after the accident. The truck driver was an owner/operator and his insurance company paid \$1 Million (probably the limits of his insurance) and the trucking company's insurance paid \$5.5 Million. The case lasted 5 years and was fought out in Courts in Georgia, St. Louis and then in Benton County, Missouri.

Another trucking case in Jackson County resulted in a \$5.9 Million settlement. There the injured plaintiff had multiple surgeries, hip replacement and resulting permanent foot drop. Big money in accident cases is only where there were serious injuries.

Check Your Will The law is About to Change

Exemption Estate Tax is about to expire on December 31, 2010. 55% Federal tax on your estate is a big big law change. If you die after 2010 the United States Government can get up to 55% of your estate from your wife and kids on assets over \$1 Million. The tax would apply to a lot of families because the death estates include all assets including life insurance. So you have a million dollar life insurance policy, a \$350,000 house, stocks, cash and personal property of \$500,000, Uncle Sam gets.

The estate tax did not apply to most families before 2011 because there was an exemption (credit) of 3.5 Million Dollars for an individual and 7 Million Dollars for a married couple.

Families with assets under \$3.5 Million and \$7 Million didn't have to worry about Federal Estate Tax as you don't have enough money to trigger the tax (Missouri has no estate tax), what do you do? If Congress does not keep the ex-

emption see an attorney he can do an estate plan using a Will + a trust to protect your assets from the tax man. The type of trust used will depend on your circumstances and desires. One type of trust is called a Generation Skipping Trust where your assets are set aside to your grandchildren (skipping your children) another is a Qualified Terminable Interest Property Trust (QTIP trust) this trust allows assets to be transferred to the estate of a spouse for the benefit of a spouse's life but you designate who gets the assets when the spouse dies such as your children. You can't just give your assets to your kids because there is a gift tax of 35% (though that tax can be avoided with planning with your attorney). Of course Congress was supposed to fix this problem before 2011 but has not acted. If you have an estate that could be affected by this tax you need to re-do you Will and Estate Plan, go see a lawyer.

Social Security Benefits Protected from Bankruptcy

The debtor was not able to work because of his disability, normally what happens is he applies for disability and is turned down, he hires an attorney and files an appeal. His case is not heard for over 2 years. His doctor says he is disabled and the Judge gives him disability and orders Social Security to pay future benefits and to "back pay" from the date of filing for disability in a lump sum payment. The debtor then filed for Bankruptcy as he has not been able to pay his debts (such as the deficiency on his mortgage after the bank foreclosed on his house - mortgage \$300,000 less proceeds from the sale of \$200,000 = \$100,000 deficiency). The Court held that the lump sum Social Security payment (and future payments) were protected and the Bank (creditor) could not attach them.

Broken Car Seat = \$8 Million Judgment

A Kansas City area jury awarded an \$8 Million Judgment against the car seat manufacturer for defective design. The seat broke in a rear end accident and flipped back and hit a 2 year old setting in a car seat in the back seat resulting in brain damage, partial paralysis on the right side and the doctor testified that she would not be able to function as an adult. The seat manufacturer had won 3 similar law suits in Atlanta, Minnesota and Tampa.

But wait you say my co-worker has no more money than I do! They are a working stiff too, so if I get a million dollar judgment, I can't collect it. Yes you can!! Why? Because under the law if a company has employees and an employee through negligence hurts someone the company is responsible and must pay for the employees bad acts (you are driving the company truck and have a vehicular accident). The Corporation gets the benefit of employee labor (profit) likewise they have to pay when the employee messes up (loss). The company has insurance which covers the company for employee's negligent acts. Normally the worker and his ally agree to only collect from the co-worker money that is paid by insurance.

In 2005 the Missouri Legislature passed a new Workers Compensation Act that supplanted the old workers compensation statute and all the "case law" that interpreted the statute (stare decisis). The legislature does not like; 1. Judges; 2. Separation of power; legislative, executive and judicial; 3. They seem to think they know best. I wonder how many legislatures read every word of statutes passed and heaven forbid, understand the effect of all those words and how they apply or do they say "these words look good to me". Less than 10% of Missouri Legislators are trained to interpret legal words and their effect on other words or statutes and The Missouri Court of Appeals Western District recently held Workers Com-

pensation law as written by the legislature and did not apply to co-workers negligence the injured workers is now entitled to sue in civil court for full compensation for his damages for co-workers mess ups.

Early in my career I handled a case of exception to the safe place to work rule, I represented a widow of the worker who was trying to unstick a box folding machine. He told his co-worker he was crawling into the machine. There was no safety switch on the machine. The co-worker turned on the folding machine and was unaware that the deceased worker was still in the machine until his head came rolling out of the machine onto the factory floor.

Where I Would Rather Be, at the Elbow Inn in my home town of Devil's Elbow, Missouri on ole Route 66, 10 miles east of Waynesville chilling out and not worried about clients and their struggles in these difficult times.

Times are tough, protect yourself.
Support Our Troops.

David Lee Wells practices law at
329 Armour Road,
North Kansas City, Missouri 64116

(816) 842-2171
toll free 1-866-LAW4BIKERS
www.law4bikers.com

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JUSTICE RUN CARA Jo ROBERTS OCTOBER 23rd 2010



Cara was a loving wife, mother and daughter who was murdered in her Harrisonville home on November 5th 2008. Justice must be served! Through the efforts of many great people we are offering a reward of \$35,000. We must continue our efforts to ensure that the person(s) responsible for her murder are brought to justice.

We hope to raise the reward to \$50,000 by November 5th 2010. Join us on this

ride and help support our cause in bringing Cara the justice that she so deserves as well as her 4 year old son Carter. We will not give up, EVER!!

The ride will begin at Fatheads & Braindeads in Grandview Mo & end at Eric's Rockin C in Garden City. The ride will total about 50 miles.

Registration begins at 10:00am October 23rd, 2010

Ride starts at 12:00

Cost: \$ 20.00 per bike \$10.00 per passenger

All cars welcome too

Jim 816-446-4229 e-mail: jim211212@yahoo.com

Jeff 816-863-6669 e-mail: robertsj24@yahoo.com

THANKS TO EVERYONE FOR THEIR CONTINUED SUPPORT!!