


**Your Guide to:**

# STAGES OF AN

# AUTO ACCIDENT CASE

A photograph of two toy cars, one green and one red, in a collision. The green car is on the left, and the red car is on the right. They are both tilted and appear to be crashing into each other. A white circular callout with a black border is overlaid on the green car, containing the text 'Know what to expect during your auto accident case.'

Know what  
to expect during  
your auto accident  
case.

## IN AUTO ACCIDENT CASES, THE PROCESS OF GETTING RECOVERY CAN BE VERY FRUSTRATING.

**MOST FRUSTRATION COMES FROM NOT KNOWING WHAT TO EXPECT NEXT,  
WHICH IS WHY I CREATED THIS GUIDE TO HELP YOU THROUGH THE PROCESS.**

Multiplying your frustration are stories of people that have had their case settled in just a few months or even weeks. Some cases can be resolved quickly, but whether yours does depends on many factors. It is important to understand the stages so that you can better understand your case and know what to expect.

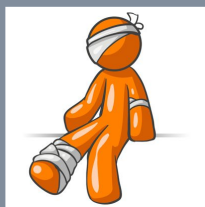
Most cases have seven stages: (1) injury, (2) treatment, (3) investigation, (4) negotiations, (5) filing the lawsuit, (6) mediation, and (7) trial.



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# THE STAGES OF AN AUTO ACCIDENT CASE:

## Stage 1 Injury



## Stage 2 Treatment



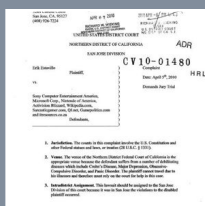
## Stage 3 Investigation



## Stage 4 Negotiation



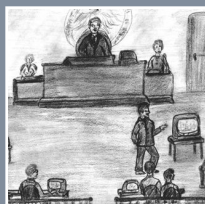
## Stage 5 Filing a Lawsuit\*



## Stage 6 Mediation\*



## Stage 7 Trial\*



\*If necessary

# STAGE #1

## The injury stage

A case or claim starts when an injury has occurred, caused by a negligent party (a/k/a tortfeasor). For example, when the car wreck takes place.

Normally the event that caused the injury is over quickly, but that event usually leads to months of pain. For auto accident cases, the statutes of limitation for Missouri and Illinois is five years and two years, respectively. This requires a suit to be filed within five years (MO) or two years (IL). Thus, determining when your injury occurred is important so your attorney knows what date you have to file suit.

**Be careful.** In Illinois, you only have one year to file suit in some cases dealing with government entities. In other instances, you may have to give notice to a state agency within few months or weeks of the injury, even though the statute of limitation doesn't expire for several years..

**What you should do if you have been injured:** the number one thing to do is get treatment. If you're hurt,

see a doctor. Do not worry about whether you have a case until after you have seen a doctor. Your first worry should always be your health.

**Things you can do to help your case:** besides seeking treatment, you might ask if there is any evidence you need to gather. If you are in a wreck, get names, addresses, and phone numbers of witnesses. If you have been to the emergency room, save the papers, bills and receipts you receive. If you have been given things from the person who caused your injury, save them. In short, save anything germane.

If you were in a wreck, save repair bills and estimates. If people give you business cards, save them. A wise policy is to get a folder or notebook and start putting everything in it.



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# STAGE #2

## The treatment stage

**The treatment stage is by far the most important part of your case. Without someone to document your injuries, you don't have a case.**

During this stage, the most important thing for you to do is get medical treatment. Get medical treatment because if you are hurt, you need to get better. That's true whether you have a case or not. Don't wait to find out if you have a case because only a fool would allow his injuries to fester just because he might not have a case. That said, during this stage, your second concern should be gathering evidence. You should consider hiring a lawyer at this stage as well so he can gather and preserve evidence for you.

Your case cannot and should not settle at this point. Settling during treatment would be like buying a car you have never seen or driven. You have no idea what problems it has or what condition it is in.

**Complete treatment and allow your doctors to determine what problems you have now, and what problems you may have in the future.**

The possible problems you may have at this stage are varied. The biggest is

getting someone to treat you. If you have health insurance, the problem you may have is simply getting through your health insurance's red tape. If you don't, the biggest problem is paying for it.

Lawyers sometimes have doctors that they can refer you to who will extend credit and wait for payment until the end of the case. That may be the only way you can go to the doctor. Its our policy to recommend that you seek help through you own insurance first. Although this may increase your own personal hassle, you avoid being personally liable for your bills if you cannot recover.

Additionally, insurance companies try to prejudice juries by introducing the fact that the lawyer helped you get to the doctor. If you don't have insurance, you should probably call some doctors and see if they will take you without a lawyer and without insurance. If you find one, go see him.

If you have been turned down several times, try contacting your lawyer to see if he can get you to a doctor.

Settling  
during treatment  
would be like  
buying a car you  
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## WAYS TO PAY FOR TREATMENT DURING YOUR CASE (IN ORDER FROM BEST TO WORST)

1

Medical  
payments  
coverage on  
auto policy

2

Health  
insurance,  
Medicaid, or  
Medicare

3

Make payment  
arrangements  
with your  
doctor

4

Have your  
doctor paid  
out of the  
settlement (on  
a lien basis)

\*CALL MY OFFICE IF YOU HAVE  
QUESTIONS ABOUT THIS LIST

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# STAGE #3

## The investigation stage

**Actually, investigation starts at the beginning of the case and is usually carried on by a number of people.**

In a car wreck, the investigation may begin immediately when someone writes down the names and addresses of the people involved and any witnesses.

In the process of the case, there is a period after which you have completed treatment that your lawyer may be reviewing the case. Normally, the attorney will order copies of your medical records and bill and other documents in order to determine the value of your case.

Though there may be little for you to do at this time, you should not ignore your ability to help at this stage. Keep a folder and collect every bill, letter, and anything you get that concerns your case.

When several things have been gathered, take them to your lawyer's office. Your attorney can sort out what is important and preserve the evidence for use at trial or during negotiations.

If you have completed treatment, you may be anxious to settle your case, but you need to understand that your lawyer needs to get copies of the medical records, bills, reports, and sometimes witness statements or governmental records to ascertain a value on your case. This process usually takes about two to six months to get those records and bills. Your case can sometimes be delayed because those having your records may not respond promptly.

You can help at this stage by doing two things. First, at the moment your doctor has released you, call your

lawyer and let him know. Your lawyer can then order your bills and records promptly. Second, make sure you have told your attorney about all of the doctors you have seen. If you have kept a folder/notebook and turned that over to your lawyer, this should be no problem.

It is possible that your treatment could carry on so long that a suit will have to be filed before the investigation is complete. The statute of limitations will dictate the latest time to file suit. Make sure you consult your attorney to determine the appropriate statute of limitations.

### INVESTIGATING THE SCENE

While today many cell phones include a camera, they lack the accuracy to fully detail the scene of an auto accident. Even if a camera is on-site at the time of the accident, an expert should be sent to establish a full, accurate photographic record.

### INVESTIGATING RECORDS

In an auto accident case, the backgrounds of the parties involved may have information that supports your claim. From up-to-date professional licensing to a criminal background check, make sure to uncover every detail. Even specific sections of road may have a paper trail of previous incidents that can help establish liability in your case.

### INVESTIGATING WITNESSES

It is important to preserve the testimony of witnesses, as it may come into play months or even years after the time of the accident. Capture all relevant information and record it in a manner that will make it usable in court (if necessary).



# STAGE #4

## The negotiation stage

**Once you have completed treatment, and your lawyer has all your medical records and bills, your attorney will usually forward that on to the insurance company's adjuster.**

Most of the time, your attorney will make a "demand," which is an initial offer to settle for a certain amount. The insurance company adjuster will review the records, bills, and any information they have gathered in their own investigation.

The negotiation process often resembles someone trying to sell an item at a pawn shop. Your lawyer will start high and the insurance company will start low. The process continues until someone says, "deal."

The critical thing is determining what your case is worth. There are two basic concepts that determine the value—Liability and Damages (this also happens to be the key elements of "negligence").

Liability is the likelihood that a jury will hold the defendant responsible under the law for injuries you have suffered. Liability can be very complicated and turns strictly on the facts of a case. The legal term

you've likely heard to describe liability is "negligence," but this is not entirely accurate. Although negligence does include the failure to use ordinary care, to prove negligence, you must also prove damages.

Damages are the likely amount of money that a jury would find you are to receive as compensation. Although there may be other factors, most of the time damages are determined by four basic elements: (1) lost wages, (2) medical bills, (3) impairment, and (4) physical pain and mental anguish.

**Role of insurance:** You may be wondering why are we talking about liability when there is an insurance policy involved. **There is a very common misperception that an insurance policy will pay damages regardless of the facts.** Although there are some types of policies out there that do, the vast majority of cases involve liability insurance.

Liability insurance is not insurance that covers the injured person. It is insurance that covers the negligent person or company for claims brought against them. For example, if you are rear-ended by another driver, you will have to bring

a suit or claim against that driver. Car insurance normally includes liability insurance, so the insurance company will pay you if it believes the other driver is responsible for causing the wreck.

**Problems preventing settlement:** the most common problems preventing settlement are disputed liability, disputed injury, or disputed damages (when the extent of the injury is disputed).

**Disputed liability:** when the insurance company says it is denying liability, it is claiming that its insured (the person you claim caused the accident) is not legally responsible. The insurance company may even be claiming that you caused the wreck, in which case you may want to contact your insurance company to defend you.

**Disputed injury:** Most disputes revolve around injury. The insurance company or defendant may be more than willing to admit they caused an accident, but not that they hurt you. And even more often, they deny they hurt you very badly.

**Prior Injuries:** It is very important if you want to protect the value of your case to let your lawyer know about any prior claims or injuries. Prior cases can be found in public records, and if you have had a prior claim, the insurance company will have access to this information through a shared database.

If you forget about a prior claim, or lie about it, it will likely be brought up to embarrass you. Thus, you hide prior claims and injuries at your peril.

Note that if an insurance company has information about other claims, they may be unwilling or reluctant to pay your claim. They may believe the injuries you are now claiming are the same injuries you have claimed in the past. If this is the case, most respectable attorneys will file suit right away.

**Insufficient Information:**

Another major problem when trying to settle is missing or insufficient information. Many times there may be questions raised that can't be answered without a suit. Court cases give both sides the right to issue subpoenas that can compel people to testify and turn over documents. Before a case is filed, people can only make requests, and they have little authority to force anyone to cooperate..

Witnesses may not be willing to give a statement as to who had green or red light. And even if they are, without examination by both sides, it may be impossible to decipher each side's story. Thus, many times a case has to be filed before either side is ready to settle.

**Have realistic expectations:**

another big reason cases do not settle promptly is one side does not

have a realistic grasp of what their case is worth. Ignore other cases and speak candidly with your attorney about your case. Most cases are worth far less than you think.



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**10 QUICK AND EASY NEGOTIATION TIPS**

1. Don't be afraid to ask for what you want.
2. Listen to the other side and try to understand their position.
3. Do your homework beforehand.
4. Always be willing to walk away.
5. Don't be in a hurry.
6. Be optimistic and expect the best outcome (trust me, it's proven to work).
7. Focus on the other side's worries and concerns to understand where to attack.
8. Present your offer in a way that shows how the other side's needs are being met.
9. Don't take the negotiations personally.
10. Don't give something away without getting something in return.

**Settlement or Lawsuit:** If you cannot get a decent offer to settle, you will have to file suit. Before suit is filed, you need to be aware that in most cases, additional expenses will decrease the amount you get. Thus, if your lawyer is advising you to take an offer, and you want to file suit, you may be reducing your net recovery. Thus, even if an offer goes up after suit, you may receive less. So, be realistic and listen to what your attorney tells you very closely.

# STAGE #5

## Filing a lawsuit

### Filing a Lawsuit

**Litigation & Lawsuit:** This is the stage where suit is filed and your lawyer starts dealing directly with the insurance company's lawyer. This stage has several moving parts, which typically occurs in the following order:

**FILING SUIT:** a suit is filed with the court. A judge is normally assigned and a cause number given to the file. A suit consists of allegations informing the court and the defendant of the nature of your claims.

**SERVICE:** After suit is filed, the court issues papers that tell the defendant to answer the lawsuit. This is given to either a sheriff or a process server. The sheriff or process server finds the defendant and serves the defendant the papers. If a defendant is hard to find, this could take months, but typically takes less than 30 days.

**ANSWER:** once the defendant is served, he has 30 days to file an answer. The defendant answers by filing written papers with the court denying your claims and giving a copy to your lawyer. If the defendant does not answer, you may take a default against him.

**DISCOVERY:** this is the most time consuming part of the case, and after the answer is filed, it can continue right up to the time of trial.

**WRITTEN DISCOVERY:** The case typically begins with written discovery, usually called interrogatories (which is legalese for written questions), requests for production (which request you to turn over documents, pictures, and the like), and may include some other general information. Another type of written discovery is requests for admissions, which requires you to admit or deny certain facts.

**DEPOSITIONS:** After written discovery is exchanged, the parties typically arrange to take depositions.

A deposition is a live question and answer session where the attorney poses a series of questions to the opposing party. A court reporter will type down every question and answer to create a written record, just like in court.

This is one of the most important parts of your case, so be sure to TELL THE TRUTH. If caught lying, the value of your case will plummet, and don't think you won't get caught.

**DOCUMENT DISCOVERY:** During the entire process, the opposing attorney will request documents from witnesses and anyone else who might have knowledge of the case. The opposing lawyer will always request your medical records caused by the auto accident using medical releases you will be required to sign during written discovery. Take note that the opposing attorney will search for past claims and lawsuits. The insurance companies share a database of claims, so any past claims will be found.

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### NEGOTIATION AND

**SETTLEMENT:** If you filed a lawsuit, it was likely because negotiations fell apart. Throughout discovery, both sides will learn more about the case, which may spark more negotiations, and hopefully resolve your case.

If trial scares you, don't fret. The chances of trial are still small at this point in the litigation.

# STAGE #6

## Mediation

Mediation is no more than a non-binding settlement conference. Both sides appear before a mediator, who acts like a referee. The basic rules are as follows:

- the mediator is a neutral third-party;
- both sides are to be present either in person or with a representative with full authority to resolve the matter; and
- what happens at the mediation is confidential and is not admissible in court.

In Missouri, mediation is usually optional. There are some instances, however, where the court will order mediation if the parties have failed to opt out. In Illinois, mediation can be mandatory, depending on the court. If the parties fail to participate, they could be penalized by the Court.

Mediation is sometimes confused with arbitration. Arbitration is more like a brief trial where parties present evidence to an arbitrator.

Then, the arbitrator makes a decision. Whatever the arbitrator decides, the parties are bound by it.

Mediation, on the other hand, is non-binding. A Mediator's role is to help the parties settle, not force

### Basic rules of a mediation

- 1. the mediator is a neutral third-party**
- 2. both sides are to be present either in person or with a representative with full authority to resolve the matter; and**
- 3. what happens at the mediation is confidential and is not admissible in court.**

them to do so. Thus, a mediator may make suggestions to the parties, but cannot dictate a result.

**How it works:** both sides appear before the mediator at the same time. It usually takes place in the mediator's office or at a neutral location.

The mediator will meet separately with both sides briefly, then meet with everyone in the same room.

After the mediator explains the process in the initial meeting, each side gives a brief opening statement setting forth their position. The parties then go to separate rooms while the mediator goes back and forth trying to get the two sides to reach an agreement. During this period, the mediator may discuss the issues freely with each side.

Mediators are trained not to reveal facts they learn to either side without permission of the side whom has revealed those facts to them. Skillful mediators will try to get both sides to assess their own strengths and weaknesses to get them to resolve their cases.

If an agreement is reached, many mediators will then draft a summary of the agreement that both sides will sign. This agreement WILL BE binding.

**Preparation:** Most of the time, both sides will do some preparation, but since it is non-binding and somewhat informal, preparations will usually be limited. In minor cases, it's not unusual for both sides to show up without preparation. The clients should defer to their lawyers, and ask if they should bring anything or prepare.

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## TYSON'S TOP 5 COURTROOM MOVIES

### #5 The Verdict



### #4 To Kill A Mockingbird



### #3 A Few Good Men



### #2 Witness for the Prosecution



### #1 12 Angry Men



## STAGE #7

## Trial

**If all attempts to resolve your case fail, you are going to trial. This means more time and resources will need to be spent on your case, which is why an attorney's fees usually increase.**

Your attorney will probably give you material to read and study. If so, do it. Getting ready for trial is like getting ready for a comprehensive exam being given by the cruelest professor. During trial, almost anything related to your injuries and daily life is fair game.

To do well at trial you should study the deposition you gave thoroughly. Try not to contradict yourself, and above all don't lie. If there is something you are afraid of, tell your lawyer right away. If you haven't disclosed something, disclose it right away. Walking into an ambush is a sure way to lose a trial. You may review your medical records, too, because most questions will center around your injuries.

A pre-trial hearing is usually held just before trial to determine whether some bits of information will be admitted.

Next, a panel of potential jurors is brought into the courtroom, where the lawyers are allowed to ask them questions. Some objections may be brought to the judge regarding particular jurors based upon what they say. Then, both sides are allowed to eliminate three of the possible jurors regardless of the reason (except race or gender). The judge then names the twelve members of the jury and two alternates. Trust me, alternates do sometimes need to step in at trial (we actually had a juror pass out during the trial).

Trial starts with both sides giving an opening statement to the jury. During opening statements, both sides state what they believe the case is about and what they believe the evidence will be. The plaintiff then calls witnesses and presents his case, followed by the defendant presenting his own witnesses.

Finally, both sides present closing arguments to the jury. The jury is then released to the jury room to deliberate and decide the case.

# ABOUT TYSON MUTRUX

## DWI/DUI, Criminal Defense, & Personal Injury Attorney

Tyson is currently an associate with Brown & Brown in St. Louis, Missouri. Tyson specializes in Personal Injury Litigation, Criminal law, and Traffic/DWI offenses.

Tyson's previous positions include clerkships with the St. Louis County Prosecutor's Office, the Hammer Law Firm, and Dunne, Koenig, & Green.

Tyson served one year on the executive board of the Bar Association of Metropolitan St. Louis Young Lawyers Division as a student chair. He also served as a Representative and as a Delegate to the American Bar Association. Tyson is a founding member of the Veterans Bar Association in St. Louis.

Tyson graduated magna cum laude from the University of Missouri with a Bachelors of Science in Business and an emphasis in Marketing. He later obtained his

Juris Doctorate from Saint Louis University School of Law. In law school, Tyson served on the executive board of the Student Bar Association and as a Senator for the University's Student Government Association.

Prior to attending the University of Missouri, Tyson served in the United States Army with the 7228th Medical Support Unit in Fort McCoy, Wisconsin. He later worked for State Farm Insurance as a Fire Claim Representative after obtaining his undergraduate degree.

### Education

- J.D., Saint Louis University School of Law
- B.S., Business, University of Missouri



Tyson  
and his wife  
Amy

### Employment

- Brown & Brown, Associate
- The Hammer Law Firm, Law Clerk
- St. Louis County Prosecutor's Office, Law Clerk
- Dunne, Koenig & Green, Law Clerk
- State Farm Insurance, Fire Claim Representative
- United States Army, Sergeant, Field Medic, EMT



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### Practice Areas

- Personal Injury
- DWI/DUI Defense
- Criminal Defense

### Bar Licenses

- Missouri
- Illinois
- U.S. Federal Courts

## FIRING YOUR ATTORNEY

Even if you really think it's a good idea...it's usually not!

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