

# Missouri Lawyers WEEKLY

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## Tow truck driver's family settles after fatal strike



Mark Cantor

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The family of a tow truck driver who was fatally struck on the side of a St. Louis highway settled a wrongful death case with an insurance company for \$750,000, the plaintiffs' attorney said.

Attorney Mark Cantor said he was able to recover under the towing company's policy, even though the driver was outside the truck at the time of the hit-and-run.

"Is a person who is 122 feet from his vehicle

when he is struck and killed an 'occupant' of his vehicle and an insured?" Cantor said. "The answer in this case is yes."

On the evening of April 16, 2012, the tow truck driver was assisting a disabled vehicle on eastbound Interstate 70 near exit 246A in St. Louis. As he was placing warning flares, he was struck by a passing car. The driver pleaded guilty to leaving the scene of an injury crash and is serving prison time.

The at-fault driver's

\$25,000 in coverage was exhausted, so the decedent's family sought the proceeds of the towing company's \$1 million underinsured motorist policy. In a lawsuit in federal court in St. Louis, the plaintiff argued the tow truck driver was "occupying a covered vehicle." The defendant insurance company, however, argued that the tow truck driver was a pedestrian, not an occupant.

Cantor said the policy defined occupying as "in, upon, getting in,

on, or out of" the vehicle, and Cantor said he successfully argued that the tow truck driver met that definition because he was returning to his vehicle at the time of the accident.

The case settled during court-ordered mediation late in 2013. Cantor asked that the names of the parties be withheld because of a confidentiality agreement. Jim Childress, an attorney for the defendant, confirmed the settlement amount. mo

### \$750,000 Settlement

#### WRONGFUL DEATH

■ **Venue:** U.S. District Court for Eastern District of Missouri

■ **Case number/date:** Confidential/Dec. 9, 2013

■ **Mediator:** Brendan Ryan

■ **Caption:** Confidential

■ **Plaintiffs' attorney:** Mark A. Cantor, Cantor & Burger, St. Louis

■ **Defendant's attorneys:** Jim Childress, Childress Ahlheim Cary, St. Louis