



# LAW OFFICE OF KENNETH E. BERGER, LLC

JUNE 2016 NEWSLETTER

## SAFETY FIRST JUSTICE ALWAYS



### FEATURES:

- 2 Daycare’s Ignorance Of Child Safety Rules & Lack of Supervision Results in Strangulation
- 2 The Best Among Us: Camp Kemo
- 3 For Referring Attorneys
- 3 Whose Insurance Applies If You Get Hurt in a Car Wreck Involving Uber?
- 4 Peer Review by Victor Li, Columbia Criminal Defense Attorney

## “A Million Dollar Thank You”

BY KENNETH BERGER

Last month, a 6 year-old boy said, “Thank you, Mr. Kenny,” before giving me a big hug outside a rural, South Carolina courthouse. I had known the little boy since he was 3. We met shortly after he suffered a terrible strangulation injury at daycare. The ligature marks from a jump rope were still on his neck the first time I came to his family’s home. From that day, until the time he thanked me, not a week went by that my team didn’t give thought and action toward trying to help him.

The insurance company for the daycare eventually paid its full, million dollar policy. I tell the short version of the story behind the

legal case inside this newsletter, but long after the procedural details are forgotten, and many years after the attorney’s fee is spent, I will remember that little boy saying, “Thank you, Mr. Kenny.”

I became a lawyer to help people. In this case, that help will come in the form of financial safeguards for an innocent child. The settlement had purpose. It ensured a little boy will get the care and attention he needs for as long as he needs it. So while he may have thanked me for being his lawyer and his buddy, I thank him for helping me realize my dream of seeking justice for the innocent.

DISCLAIMER: ANY RESULT I MAY ACHIEVE ON BEHALF OF ONE CLIENT IN ONE MATTER DOES NOT NECESSARILY INDICATE SIMILAR RESULTS CAN BE OBTAINED FOR OTHER CLIENTS. IN ADDITION, SOME OF THESE RESULTS WERE OBTAINED IN CONNECTION WITH OTHER FIRMS. I AM A SOUTH CAROLINA INJURY LAWYER, NOT A MIRACLE WORKER. I EVALUATE EVERY CASE ON ITS OWN MERITS AND ONLY ACCEPT A LIMITED NUMBER OF NEW CASES EVERY YEAR.

# Daycare's Ignorance Of Child Safety Rules & Lack of Supervision Results in Strangulation

BY KENNETH BERGER

On the morning of September 18, 2013, a Burbee Place daycare teacher took a group of 3 and 4 year-old students to the playground. She gave the children a box of toys that included jump ropes, then sat on a bench as the children played. She was the only adult on the playground.

Burbee Place's daycare teacher, Ismary Anariba, did not notice a rope being taken to the top of a slide, then being looped around the railing of the slide's platform, or next being looped around a 3 year-old's neck. She did not notice the 3 year-old going or being pushed down the slide with the rope around his neck. Ismary did not notice anything wrong until she saw 3 year-old "DB" lying motionless on the slide. His face was blue, and he did not appear to be breathing.

DB was ultimately airlifted to Levine Children's Hospital in Charlotte, NC. He spent several nights at Levine, but miraculously walked out of the hospital on September 21. Everything appeared to be fine when DB first arrived home. He showed few, if any, cognitive changes, and everyone was hopeful that DB would be the same little boy he had always been. Yet as time went on, DB began to struggle with impulsivity, unprovoked aggression, and inattention. He also began to fall down 3 and 4 times per day. Neuropsychological testing confirmed the existence of a brain injury, but the defense continued to argue that DB's behavior was indistinguishable from most little boys his age. We constantly had to point out that

DB's case had nothing to do with most little boys, but rather this one little boy who was found hanging from a rope, suffered a brain injury, and was going to require medical care for the rest of his life.

After a number of depositions, expert testimony, 1000s of records, and nearly 3 years, the case settled for the full insurance policy limits. We could not have achieved this result without great doctors, great parents, and a great legal team that included my good friends, David Yarborough and David Lail.



## THE BEST AMONG US: CAMP KEMO

Camp Kemo is a week-long summer camp for cancer patients between the ages of 5 and 18 and their siblings. It is completely funded by community donations and free for all participating families to enjoy. For more than 35 years, Camp Kemo has provided children with an event unlike anything else. Participants partake in a variety of activities such as swimming, hiking and boating, which allow campers to learn trust and respect, while having fun and building lasting friendships.

As avid supporters of Palmetto Health Richland, we are proud to contribute to its yearly events like Kemopalooza and Camp Kemo. Registration is currently open for the next camping session from June 13-18. It will be held at the River Oaks Retreat Center in Honea-Path, SC. For more information, please visit [campsite.palmettohealth.org](http://campsite.palmettohealth.org).



# FOR REFERRING ATTORNEYS:

If you are one of our many referring attorneys, we want to thank you for allowing us to serve. Your trust means a great deal.

We seek to strengthen your relationship with the client by providing him/her with a great experience, as well as a great result. Additionally, we always make it a point to emphasize that you are truly the person to thank, as it was your good judgment that allowed us to take part in their representation.

If questions arise in the coming month concerning a life-changing injury or wrongful death case, we are here to help. From simply answering your questions to being associated on or referred the case, please let us know what we can do to benefit you and the client. Likewise, if you have a potential client call us directly, be sure to have him/her say who made the referral so we know who to thank.

To discuss anything from litigation tactics to our core values, call us at **(803) 790-2800** or email [kberger@bergerlawsc.com](mailto:kberger@bergerlawsc.com).

## Whose Insurance Applies If You Get Hurt in a Car Wreck Involving Uber?

BY KENNETH BERGER

For people across South Carolina, Uber is becoming an increasingly popular option. After first appearing in Charleston, Uber now provides service in Columbia, Greenville, and other parts of the state. The company promises convenience, cleanliness, and a better overall experience than riding in a taxi. Uber also promises safety. So what happens if you are involved in an accident with an Uber driver - whether as a passenger or while in another car?

### For Uber Passengers

Here's the good news: Uber carries \$1m in liability, uninsured, and underinsured coverage. This means that regardless of whether the Uber driver or someone else was responsible for the wreck, there will be at least \$1m to cover your injuries and other losses. For example, let's say a drunk driver with only \$25,000 in liability coverage crashes into an Uber vehicle with you in the backseat, and your injuries result in medical bills over \$100,000. In that scenario, Uber would provide up to another \$1m in underinsured coverage, beyond the drunk driver's limits. Uber's policy limits are not based on where the collision occurred, be it downtown Charleston, Greenville, or even outside South Carolina.

Here's the bad news: Uber classifies its drivers as independent contractors. What does that mean for passengers? Essentially, that Uber will deny liability for harm caused by any intentional act on the part of one of its drivers - including assaults against passengers. Stories of assaults and other inappropriate conduct by Uber drivers are making headlines across the country. At this time, the law is undecided on whether the company will be held liable for attacks by drivers, but Uber has repeatedly taken the position that because drivers are not ac-

tual employees, it cannot be forced to pay for intentional acts of harm.

### For Non-Uber Passengers Involved in the Collision

If you are in a car that gets hit by an Uber vehicle, the major question will be whether the Uber driver was carrying a passenger or between fares. If the other driver had a paying passenger in the vehicle, then the \$1m policy limits noted above will apply. On the other hand, if the driver was off-duty or between pick-ups, then you may be limited to the driver's personal coverage limits, along with your own coverage, just like in a regular car accident. Even in this latter scenario, it is likely that there will be multiple insurance companies involved, probably pointing the finger at each other.

### What You Can Do

You are already doing the right thing by getting answers to your questions. In addition to insurance issues, there may be questions concerning medical bills, whether you should attend the traffic court hearing, or how you should you be compensated for damages such as physical pain and the increased risk of later health problems caused by the collision.

When it comes to medical questions, I ask doctors. When it comes to legal questions, I encourage you to get free answers from a lawyer. You can request a free copy of my book on South Carolina car accident law or call my Columbia office today at **803-790-2800**. Crashes involving Uber vehicles tend to have more nuances and potential pitfalls than ordinary accidents. You have already had harm done to you by an unsafe driver, do not allow more harm to occur by being uncertain of your legal rights. We are here to help.

# PEER REVIEW:

*via AVVO*

BY VICTOR LI, COLUMBIA  
CRIMINAL DEFENSE ATTORNEY

“Kenneth is an excellent attorney. *He is a well known and well respected leader in the legal community.* I would not hesitate referring or working together on a case with Mr. Berger.”

NOTE: THIS PUBLICATION IS INTENDED TO EDUCATE THE GENERAL PUBLIC ABOUT PERSONAL INJURY, CIVIL LITIGATION AND WORKERS' COMPENSATION ISSUES. THE INFORMATION CONTAINED IN THIS PUBLICATION IS NOT LEGAL ADVICE. EVERY CASE IS DIFFERENT. THE INFORMATION IN THIS NEWSLETTER MAY BE FREELY COPIED AND REDISTRIBUTED AS LONG AS THE NEWSLETTER IS COPIED IN ITS ENTIRETY.



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