



An Urgent Care Operator's Liability for a Car Crash into the Center

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Urgent message: The owners and operators of urgent care centers are liable only for “foreseeable” events, which generally excludes a car crashing into an urgent care center and other “freak” accidents.

Perhaps it's the last story on a newscast, or in the strange-but-true section of the newspaper or a website: a vehicle crashes into an urgent care center. As strange as this news may seem, it's not entirely uncommon. In the past decade, there have been at least 13 incidents of motor vehicles crashing into urgent care facilities—some of which have resulted in the deaths of patients and staff.

Of course, each of these accidents—when considered on its own—might be treated as a one-off occurrence or a “freak accident.” But given the nation's footprint of over 11,000 urgent care centers, there are clearly slim but ever-present odds that a car could come crashing through an urgent care center at any time. This article will explore the responsibility of an urgent care center to protect its patients, both against a car ramming into the center, specifically, but also in general.

Premises Liability

Premises liability is a legal term that is used in litigation of personal injury where the plaintiff is injured, and claims this was caused by some type of unsafe or defective condition on the property.¹ In an urgent care setting, it's possible that a patient or another visitor to a facility could be hurt from a vehicle crashing into the building.

Personal injury cases are based on negligence, and in premises liability cases, in order to recover, the injured person must prove that the property owner was negligent in the ownership

“Without proof that a car crashing into the urgent care center is reasonably foreseeable, and evidence of prior similar reckless acts on the premises, a plaintiff will be unable to state a claim of premise liability or negligence.”

and/or maintenance of the property. For example, under Michigan law, a plaintiff must show that there was 1) a duty owed by the defendant to the plaintiff, 2) a breach of that duty, 3) causation, and 4) damages.²

Typically, the standard of care owed to a visitor depends on whether that visitor was a trespasser, a licensee, or an invitee. An invitee is a person who enters the land of another on an invitation that carries with it an implication that the owner has taken reasonable care to prepare the premises and to make them safe.³ Also known as a “business invitee,” he or she is a visitor to the property for a reason that benefits both the visitor and the property owner, such as treatment of patients by the staff of an urgent care facility.



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Car crashes into urgent care are more common than you might think.

A simple Google search reveals at least 15 incidents of a motor vehicle crashing into an urgent care facility over the past 10 years, a few of which resulted in the death of patients and staff. While each of these, individually, could be treated as freak accidents, clearly there are slim but ever-present odds that a car could come crashing through an urgent care center at any time (just as there are odds of any other disaster occurring). The question is, given anything that can happen, what is the responsibility of an urgent care center to protect its patients, both against a car ramming into the center, specifically, but also in general? Following are cases in which such freak accidents did occur in urgent care centers:

- January 16, 2017, Albany Walk-in Care in Guilderland, NY; <http://wnyt.com/news/car-into-workfit-walk-in-care-center-western-avenue-guilderland-albany-county/4372264/>
- January 6, 2017, US Healthworks in Nashville, TN; <http://www.tennessean.com/story/news/crime/2017/01/06/truck-slams-into-building-murfreesboro-pike/96237130/>
- June 12, 2016, Wellmont Urgent Care Center, Norton, TN; <http://www.wcyb.com/news/virginia/car-crashes-into-norton-wellmont-urgent-care-center/42639974>
- March 7, 2016, Eskenazi Urgent Care East, Indianapolis, IN; <http://cbs4indy.com/2016/03/07/car-crashes-into-marion-county-health-department-office-building-driver-detained/>
- November 5, 2015, Urgent Care Extra in Las Vegas, NV; <http://www.reviewjournal.com/news/las-vegas/car-crashes-urgent-care-clinic-no-one-hurt>
- August 15, 2015, Pioneer Urgent Care, Elko, NV; <http://mynews4.com/news/local/elko-district-attorney-dies-after-car-crashes-into-building>
- March 13, 2015, OrthoCarolina Urgent Care, Charlotte, NC; <http://www.14news.com/story/28477538/car-crashes-into-front-door-of-charlotte-medical-building>
- March 3, 2015 Hoag Urgent Care, Huntington Beach, CA; <http://www.ocregister.com/articles/santa-706663-beach-hermosillo.html>
- December 26, 2015, Highlander Point Urgent Care, Floyds Knob, IN; <http://www.wdrb.com/story/27710411/police-say-man-crashed-car-into-floyd-co-urgent-care-center-when-denied-codeine>
- December 13, 2014, Pulse Urgent Care, Redding, CA; <http://www.krcrtv.com/news/driver-arrested-for-dui-after-crashing-into-urgent-care/10863158>
- May 28, 2014, Urgent Care of the Northeast, Plattsburgh, NY; <http://www.mynbc5.com/article/car-crashes-through-urgent-care-building/3316791>
- October 20, 2013, Our Urgent Care, St. Charles, MO; http://www.stltoday.com/news/local/crime-and-courts/minivan-crashes-into-a-st-charles-urgent-care-clinic-killing/article_5e092963-15cc-5cd5-b3b1-3160fe1a2601.html
- March 20, 2012, Clinica Medica Familiar, Tucson, AZ; http://archive.azcentral.com/news/articles/2012/03/20/20120320_PN10321-MET-tucson-armed-robbery-car-accident-pima-co.html
- January 1, 2012, MultiCare Urgent Care in Lakewood, WA; https://www.youtube.com/watch?v=96INrelo_yA
- March 17, 2006, Concentra Urgent Care in Santa Fe, NM; http://www.santafenewmexican.com/news/local_news/driver-to-serve-years-in-concentra-crash/article_25970b44-7b91-5cfa-82ea-3375872c11ef.html



Gunderland, NY: A car crashed into Albany Walk-in Care after the driver accidentally hit the gas instead of the brake. Nobody was injured. Photo courtesy of News10 ABC, Albany, NY (<http://news10.com/2017/01/16/car-slams-into-albany-urgent-care-building/>).



Warren, MI: Concentra Urgent Care has erected cement barriers to protect this center from an automobile crashing into it. In 2006, three people died and multiple others were injured when a car came crashing through the Concentra location in Santa Fe, NM. Photo courtesy of Urgent Care Association of America (<http://www.ucaoa.org/?UCAccesso8272015>).

Foreseeability

The concept of reasonable foreseeability is the critical component in this analysis, and that’s the situation with the owner of an urgent care center, who is offering medical services to the public. Patients are entitled to the “highest level of protection under premises liability law.”⁴ However, this level of protection does not extend to considering and protecting against a vehicle crashing into the building. Courts have stated that while landowners owe a duty of care to invitees, they are not the in-

surers of their invitees’ safety. The question of duty, one Texas judge explained, “turns on the foreseeability of harmful consequences, which is the underlying basis for negligence.”⁵ Under Washington law, a business owner has a duty to protect invitees from “reasonably foreseeable criminal conduct by third persons.”⁶ But absent proof that a car crashing into the urgent care center is reasonably foreseeable and evidence of prior similar reckless acts on the premises, a plaintiff will be unable to state a claim of premise liability or negligence.⁷

“Courts have held that a business has no obligation to protect those on its premises from runaway vehicles, which are inherently unforeseeable.”

Proximate Cause

In a negligence action generally, in order to establish that an action or omission is the proximate cause of a plaintiff's injury, the plaintiff must establish both 1) foreseeability and 2) cause in fact.⁸

A defendant urgent care center owner doesn't have a duty to protect patients against such an injury. Viewed another way, the standard of conduct required is the general standard of ordinary care that a reasonably prudent person would exercise under all the pertinent circumstances.⁹ Thus, the duty to protect invitees against the reckless or criminal acts of third persons is determined by whether the risk of harm from such conduct is unreasonable under the circumstances. A risk is unreasonable if it is “of such magnitude as to outweigh what the law regards as the utility of the alleged negligent act or omission.”¹⁰ If the probability of the reckless act of third persons is relatively slight, the utility of the occupier's operation is great and the burden of protective action would be substantial, courts have found that a reasonable occupier may ignore the risk and proceed on the assumption that reckless or criminal acts of third persons will not intervene.¹¹ The odds of a car crashing into an urgent care center are slight, the center's utility is great, and the effort to guard against such a risk would be significant. As a consequence, an owner doesn't need to guard against crashing cars. As one Texas court stated, “the risk of cars crashing through the walls with such force as to injure” in this case an apartment dweller, “is extraordinary and unforeseeable.”¹²

Other courts have addressed the foreseeability of harmful consequences from out-of-control cars in parking lots adjacent to buildings occupied by invitees. In Texas, a court held that a restaurant owner owed no duty to erect a parking lot barrier to prevent an intoxicated driver from driving his vehicle into restaurant entrance.¹³ Likewise, in Mississippi, a convenience store owner was held to have owed no duty to erect barriers to keep vehicles from driving through the store's plate glass window.¹⁴ The court in Texas summarized that “no reasonable occupier of land, situated as was the lessor in this case, would go to the expense of erecting barriers around all the buildings

adjacent to the parking lot to prevent such an extraordinary and unforeseen occurrence.”¹⁵ The owner's duty to protect invitees against the reckless or criminal acts of third persons is determined by whether the risk of harm from such conduct is *unreasonable* under the circumstances.¹⁶ Typically, courts will find that the reckless act of the car driver to be a *superseding cause* of a plaintiff's injuries. Courts in a number of states have held that a business has no obligation to protect those on its premises from runaway vehicles, which are “inherently unforeseeable.”¹⁷ In the words of the Minnesota Supreme Court:

“To erect an impregnable barrier around all of the buildings would both obstruct normal pedestrian traffic and impose on the owners a burden completely out of proportion to the anticipated risk. We agree that liability cannot be predicated on the fact that out of the many thousands of vehicles which use parking areas in a normal way, one or two may occasionally jump the curb and expose pedestrians as well as tenants to the remote possibility of injury.”¹⁸

Conclusion

While it is *possible* that a driver of car could crash into an urgent care center, a vast majority of courts have found that this is not *foreseeable* and, therefore, the urgent care operator would not be liable. ■

References

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2. *Dybek vs Fedex Trade Networks Transport & Brokerage, Inc.*, 997 F. Supp. 2d 767, 771 (E.D. Mich. 2014).
3. *Hughes vs PMG Bldg., Inc.*, 227 Mich. App. 1, 574 N.W.2d 691, 695 (Mich. App. 1997).
4. *Stitt*, 614 N.W.2d at 92. See *Detrick vs Heidtman Steel Prods.*, 2017 U.S. App. LEXIS 1526, 7-8 (6th Cir. Mich. 2017).
5. *Hendricks vs Todora*, 722 S.W.2d 458, 460 (Tex. App.—Dallas 1986, writ ref'd n.r.e.) (citing *Corbin vs Safeway Stores, Inc.*, 648 S.W.2d 292, 296 (Tex. 1983)).
6. *Nivens vs 7-11 Hoagy's Corner*, 133 Wn.2d 192, 943 P.2d 286, 293 (Wash. 1997).
7. See *McKown vs Simon Prop. Grp., Inc.*, 622 Fed. Appx. 621, 622 (9th Cir. Wash. 2015).
8. *Ambrosio vs Carter's Shooting Ctr., Inc.*, 20 S.W.3d 262, 265 (Tex. App.—Houston [14th Dist.] 2000, pet. denied).
9. *Corbin vs Safeway Stores, Inc.*, 648 S.W.2d 292, 295 (Tex. 1983).
10. RESTATEMENT OF TORTS § 291.
11. See RESTATEMENT OF TORTS, § 302A, comment d; *Hendricks vs Todora*, 722 S.W.2d 458, 461 (Tex. App. Dallas 1986).
12. *Cueva vs APTDF, Ltd.*, 2016 Tex. App. LEXIS 5868 (Tex. App. Houston 14th Dist. June 2, 2016).
13. *Hendricks vs Todora*, at 462. See *Watkins vs Davis*, 308 S.W.2d 906, 909 (Tex. Civ. App.—Dallas 1957, writ ref'd n.r.e.) (“where the injury . . . results from loss of entire control and direction of [a] . . . machine, the occurrence falls within the domain of the unusual and extraordinary, and therefore, in contemplation of law, [of] the unforeseeable”).
14. *Carpenter vs Stop-N-Go Markets of Ga., Inc.*, 512 So.2d 708, 709 (Miss. 1987).
15. *Hendricks vs Todora*, *supra*.
16. See also *Timberwalk Apts. vs Cain*, 972 S.W.2d 749, 756 (Tex. 1998) (“A duty exists only when the risk of criminal conduct is so great that it is both unreasonable and foreseeable”).
17. See, eg, *Albert vs Hsu*, 602 So. 2d 895 (Ala. 1992); *Nicholson vs MGM Corp.*, 555 P.2d 39 (Alaska 1976); *Mack vs McGrath*, 276 Minn. 419, 150 N.W.2d 681 (Minn. 1967); *Carpenter*, *supra*; *Cromer vs Hutto*, 276 S.C. 499, 280 S.E.2d 202, 203 (S.C. 1981); *Kusmirek vs MGM Grand Hotel, Inc.*, 73 F. Supp. 2d 1222 (D. Nev. 1999); *Estate of Myers vs Wal-Mart Stores, Inc.*, 2011 U.S. Dist. LEXIS 39164 (E.D.N.C. Apr. 8, 2011).
18. *Mack vs McGrath*, *supra*, at 686.