

Get Back Up

No matter how many times he's been knocked down,
Michael Burg always rises

BY JESSICA GLYNN PHOTOGRAPHY BY PAUL WEDLAKE

When Michael S. Burg was 12 years old, he found a biography of Clarence Darrow on his parents' bookshelf and decided that if his NBA career did not take off—at 6-foot-2, he was the Wilt Chamberlain of his junior high in Chicago—he would become a lawyer. Not just any lawyer, of course. Darrow had said, "The only real lawyers are trial lawyers."

Fifty years later, Burg held up that same tattered biography, theatrically watching a piece of the cover crumble to the ground, as he received the Clarence Darrow Award in 2013, after leading some of the largest mass tort actions in the country—managing hundreds of law firms and clients in the Zyprexa, Ortho Evra and Yaz/Yasmin litigation that resulted in total settlements of over \$3 billion.

"Michael is a superb lawyer who pays great attention to detail," says retired U.S. District Judge for the Southern District of Illinois David R. Herndon, who oversaw the Yaz/Yasmin litigation. "He is very aggressive about the positions he takes in all court matters."

The word "aggressive" comes up frequently when people talk about Burg's larger-than-life courtroom persona. "He's fearless," says longtime friend and frequent adversary Michael L. O'Donnell of Wheeler Trigg O'Donnell. "He's really one of the best-known plaintiff lawyers in the United States."

"He loves the combat of the courtroom," says Alan K. Simpson, who served in the U.S. Senate (R-Wyoming) from 1979 to 1997. "He loves the fray; loves to gird his loins and sharpen his sword and head into the coliseum."

Over the last few years, as Burg began telling the story of his 40-year career in self-deprecating detail, he realized just how far people's perception of him was from reality: "People thought that I was probably the guy who had a silver spoon in his mouth or this golden road to success."



Michael S. Burg

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Personal Injury – General: Plaintiff;
Class Action/Mass Torts: Plaintiff
Colorado Super Lawyers: 2006–2019

Burg's book, *Trial By Fire: One Man's Battle to End Corporate Greed and Save Lives*—which doesn't even dig into the mass tort work that won him accolades until page 251—tells the real story. It begins with a scrappy Jewish kid, the son of a liquor salesman, trying to survive the streets of Chicago before heading west to seek his fortune and escape the Chicago winters. After college and law school at the University of Denver—and a second, successful try at the bar exam—Burg hoped his paycheck from Adler, Zall & Haligman would see a nice bump. His first check, however, was even less than he'd been making as a clerk. He was told he'd have to take that up with managing partner Ed Haligman, so Burg encountered him in the hallway one morning and inquired about his pay. Soon, everyone in the firm was talking about how Burg had pushed a senior partner. Burg denied it and found himself in the boardroom cross-examining the man: "Mr. Haligman, tell me where I pushed you. You can't tell me where I pushed you, because I didn't push you. Isn't that right, Mr. Haligman?"

Point made. Burg was told he should find a new firm. A senior partner at another firm said his reputation preceded him and no sizeable firm in Denver would hire him. Scared to death, Burg started his own firm in an executive suite, doing collections work at a desk his dad bought him while his landlord, Jerry Dunn, paid for his secretary and a former fraternity buddy, Dale J. Coplan, sent a couple of clients his way.

"I was a one-year practicing attorney," says Coplan, now of counsel at Burg Simpson. "Me and my partner at the time, we literally gave him two clients. So the joke is you can only imagine the quality of a client that a one-year attorney would give away to somebody else. But he always remembered the referrals."

When Burg first told the story of his rocky start at a conference, he was struck by the young lawyers who came up to thank him. "I felt so betrayed that no one would come up to me when I failed the bar to say, 'Hey it's OK,'" he says. "The reason I talk about those failures is hopefully to inspire people who have had struggles."

Sitting in his corner office at the firm that has grown to 64 lawyers and 140 employees, Burg nods toward a print of boxer Jack Dempsey given to him by his former partner, William L. Simpson, now a judge representing the Fifth Judicial District of Wyoming. "First round he got knocked out of the ring and they thought the fight was over and the press pushed him back in the ring, and he got back up and he won the fight. That was given to me because of my view that the more times you get knocked down, the more you have to get back up. I think that holds in life, and I think it holds in law."

Early on, he'd take any case that came through the door, including a referral from the manager of the Burger King where he ate every day, which turned out to be his first big victory: a jury verdict of over \$10,000 on behalf of the owners of a German Shepherd who died at the kennel hired to care for him while they were on vacation.

Still, Burg was exploring his options. For a while, he was making more money acting in commercials and industrial films than as a lawyer. He even moved to LA for a stint.

Soon after Burg returned to Denver, he received a surprising call from his younger brother, Peter W. Burg, a successful insurance defense lawyer who was about to become a shareholder at the firm of Wood, Ris & Hames. "He called me up and said, 'I want to come work with you.' I said, 'You got a good firm, a good life. Are you crazy? It's a mess here.' But then I said to him, 'I'll tell you this, if you want to make money you need to stay where you are, but if you want to have fun—'"

Burg's story is interrupted by a knock at the door. As if on cue, his brother pokes his head into the office. "I was just talking about you, Peter," Burg says.

The Burg brothers joined forces in 1984. "Maybe it's because I am Michael's younger brother, but even during his struggles as a solo practitioner, I always saw greatness in Mike," Peter says. "I saw his great attributes perhaps before Mike did."

While the firm found success, neither of the Burgs found insurance defense personally rewarding. Peter even had a crisis of conscience after depositing the mother of a brain-injured child. "I didn't feel like a good person," he says.

So they decided to shift from insurance defense to the plaintiff arena.

"That was a major decision, which pretty much meant we had to start over and build a whole new firm, and there was a lot of resentment from the insurance companies," Michael Burg says. "Some of them refused to pay their bills. We had to threaten to sue them. Some people left the firm. We even had some shareholders who told us we would fail and they didn't want to be part of that; that no one had ever made that switch."

Some stayed, including Holly B. Kammerer. "It was more in line with our philosophy as a group," she says, "wanting to help people and stand up for consumer rights and the little guy."

In 2004, after a natural gas explosion decimated a whole city block in downtown Steamboat Springs, Burg saw his firm's insurance and plaintiffs' work converge. Continental Insurance hired them to recover property loss, but the lawyers at the firm were more interested in the human cases. They landed on an idea to include individual personal injury claims with their property case and ultimately brought those to trial against Greeley Gas and US West.

Burg's subsequent trial performance—in a makeshift courtroom at the airport, since the Routt County courthouse was too small—drew from lessons learned in front of a camera and onstage at Denver's Comedy Works. He introduced himself to prospective jurors by asking how many of them were nervous, then adding, "I'm really nervous too, because this is my first trial ... in an airport."

Burg says the key moment of the 9 ½-week trial came when he asked a Greeley Gas employee in cross-examination about the company's failure to inspect and replace the line. Burg asked, "How many more time bombs are there on the streets of Steamboat?" He got an objection and changed the question to, "How many more explosions can we anticipate?"

"I don't know" was the answer that preceded a \$6.4 million verdict. Shortly after, the city council made them dig up and replace the entire gas system.

Afterward, Wyoming lawyers representing two people badly burned in a similar explosion enlisted Burg for their case. He delivered an impassioned closing argument asking jurors to imagine the pain of burns and blisters over one-third of their bodies. The jury responded with a \$5.6 million verdict.

One of those Wyoming lawyers was Bill Simpson, the son of U.S. Senator Alan Simpson. After the victory, the senator called Michael to request a meeting and, over lunch, their merger was born. Burg suggested they call it Simpson Burg, but Simpson countered. "We're going to name it Burg Simpson," he said. "You're the ones gaining the fine reputation."

There were some surprised reactions to the merger—including Michael and Peter's own parents, who asked if the senator knew they were Jewish before agreeing to the deal. Others questioned the political optics of Alan Simpson's Republican name being attached to a plaintiff's firm. Simpson says he wasn't concerned. "I'm not a single-issue person," he says. "Single-issue people have heartburn and B.O. and gas. It doesn't bother me as long as they use their common sense and brains and intelligence. They're bright and they're tough and they're fair, and that's the way I practice law."

Years later, a woman walked into the firm's office with a Fen-Phen case. Litigation surrounding the anti-obesity drug had been in the works for three years, but no one had looked for cases in Wyoming, Burg says. The firm ended up with over 300 cases that settled within a year, a quick timeline in the slow-moving mass tort world. "Within a couple of years," he says, "we went from nothing in mass tort to being lead counsel on some of the largest mass tort cases in the United States."

Michael London of Douglas & London in New York, who worked with Burg on the Zyprexa, Ortho Evra, and Yaz/Yasmin cases, was not surprised by Burg's rise in the national mass tort scene. "Michael's a doer," London says. "He's not going to stand on the sidelines rooting people on. He's going to get on the field and play the game and play at the highest level. He broke onto the scene and showed a willingness to do and a great skill set at whatever he did."

London points to a memorable Burg deposition of a Johnson & Johnson employee in the Ortho Evra litigation. "It was a tough deposition of an adverse witness who Michael, through tremendous preparation, exposed as a cheat throughout his life, including manipulating data as it pertains to safety issues with the birth control patch," he says. "It was masterfully done."

What gets lost in discussions about Burg, says London, is the compassion and kindness underneath the big personality. "He never loses sight of his clients' interest and well-being."

Gina Clement, who has been Burg's assistant for 20 years, says the same goes for his employees. "There are a lot of people who depend on this firm for their livelihoods, and he really takes that to heart," she says. "He's very passionate about what he does, but he also understands the magnitude of how many people depend on him."

Kammerer, who calls Burg her mentor and has tried more than 25 cases with him, says he's the reason she's still doing trial work. "He's stress-free in trial, or at least appears to be," she says. "He gives you advice but doesn't question your decision-making after the fact. There's no throwing anyone under the bus. Sometimes the stress is falling off other lawyers in trial. You can just see it. I think I know him really well. He's not just hiding it or faking it. He's very confident and prepared."

Part of the reason Burg was so determined to make it on his own in the early days was because he didn't want to work at a toxic firm. "There are so many lawyers whose egos are beyond their own abilities," he says. "I truly believe that everyone who has been involved in my life—all the people here: the receptionist, my brother, the paralegals—they have helped me be the success I am here today. Nobody does it alone. I'm very proud of the things we've accomplished in mass tort. As a firm, we are all dedicated to making sure our clients come first. There's no such thing as an easy case; before we go to trial we put in thousands of hours on a case.

"The key is to make it look easy." 



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