

# Mysterious car accident destroys a life

**A rear-end collision has severe consequences for Caroline Bono. The formerly successful lawyer is convinced she is a victim of fraud.**



Caroline Bono at Bürkliplatz, where the car accident occurred in November 2002: a car crashes into her rear end while she is standing in front of a red light. Photo: Thomas Burla

It is November 19th, 2002; a cool evening in autumn, darkness has already broken over Zurich. Caroline Bono, then 39, is stuck in front of a red light at the Bürkliplatz in the city center. All of a sudden she hears an “incredible bang” and blacks out; her memory returns only when she is standing in the street looking at the car that crashed into the rear end of her Chrysler Voyager: its front is crushed, the lights are smashed, the hood is dented and raised. This is what she records in the notes she made after the accident.

The person that caused the accident, a 45-year old secretary, urges Bono to move her car immediately; congestion was building up, other drivers were honking. “I insured my car at Zurich Insurance Company. My husband works there. He’ll sort this out,” the woman says. “You can trust me; it’s clearly my fault.” So there is no police involvement and no accident report; the driver hands Bono her business card. In her recollection the woman smells of alcohol. But Bono’s head is thudding, and she gets back into her car and drives off “as if in

shock.” After 10 minutes, near Zürichhorn, she interrupts her drive home. She feels a horrible pain in her neck. Nausea and dizziness seize her as well as a heavy exhaustion.

### **Rushed to the hospital**

On the same evening, she goes to the emergency room of the Männedorf hospital. The intern on duty diagnoses a whiplash injury and certifies she is unfit to work for four days. During the following days the pain increases to an intolerable extent. Bono sees a doctor who assumes she might be suffering from spinal cord contusion and hospitalizes her on an emergency basis in the Hirslanden clinic where further injuries are diagnosed. She receives in-patient treatment for a month.

Five years after the accident Bono writes in her diary: “If I would have known what lay ahead of me, the violent pain I had to endure day after day, the fact that I would lose everything that was important to me apart from my younger two children and my best friends—I probably would have given up, fallen into despair or gone crazy.”

After treatment at the Hirslanden clinic, Bono spends 43 days in Rheinfelden for rehabilitation therapy. According to the clinic’s records, she can neither walk nor stand for longer than 30 minutes despite even the strongest pain medication. Nor can she remain seated for more than 20 minutes. Reclining is the only position in which she can bear the terrible pain. She cannot focus and forgets what she is told. Today, six and a half years after the accident, she is unable to work for more than three to four hours a day—with intermittent breaks. After 30 minutes the headache sets in.

### **A catastrophe – also for the children**

Bono is an excellent lawyer, as professional colleagues confirm. She worked for a corporate law firm and taught economic mediation to management students at the University of St. Gallen. She made good money and was resilient. Her first three children are born while she is at law school. She nevertheless graduates with honors. Her fourth child is born before she finishes her doctoral thesis. She manages her double roles as

mother and professional well, even after her husband leaves her, and never stays a day away from work. She speaks English, Spanish, Italian and French. However, after the accident, she is unable to make a coherent sentence in any foreign language, and she forgets important information.

During hospitalization alternating domestic aids take care of her four children – then 6, 10, 12 and 15 years old. They are distressed about mother’s absence; even after she returns from rehabilitation her health problems do not allow her to look after them properly. They are failing at school and anxious about being abandoned. Due to increasing financial problems and the pressure from social security she finally has no other choice but to grant her ex-husband custody of two of her children. One of them develops a severe illness as a consequence. Because of financial concerns Bono gives up her house and moves into an apartment in another town. She loses a large part of her circle of friends and acquaintances, as she is unable to involve herself in any social events.

Bono knows that her professional future depends on her passing the second part of the bar exam. Preparing for the exam is an ordeal. Despite being one hundred percent incapable of working, she tries to study in a reclining position. On November 22, 2003, she passes the exam only barely, mainly thanks to her solid previous knowledge. In the end, however, her employer, a law firm, lets her go: a 30 percent working capacity is just not enough. In addition, she is hardly able to concentrate. The downward spiral continues: Bono loses her tenure in St. Gallen and is battered with payment summons.

Then the shock: Zurich Insurance denies that her health problems are directly connected with the accident. They maintain her trouble comes from managing family and work and therefore pay out only minimal amounts, a fact that entirely wears Bono out. She requires assistance from social welfare. Because she cannot find a job she starts working as a self-employed lawyer in 2005. Her reduced working capacity does not allow her to

pay back the load of debts she took on. Friends advance her the money she needs for living costs.

## **Doubts about the car involved**

Caroline begins to investigate the background of her accident in detail, which takes months. Whenever her strength allows, she studies insurance statements, diary notes and police records of the interview with the driver at fault which were conducted by the police five months after the accident. She comes across surprising information. With each piece of evidence she becomes more convinced that fraud is involved:

According to her diary, on the day after the accident she talked with the driver on the phone. The woman emphasized that she crashed into her “with no more than 30 to 40 km/h (19-24mph).” “That’s too slow to cause a whiplash injury.” The “incredible bang” that caused her to black out still resounds in Bono’s ears.

For the first time half a year after the accident, Bono sees photographs of the car taken by Zurich Insurance 31 days after the crash. She is immediately convinced: they were not of the vehicle involved in the accident, but of another car. Only a few scratches can be seen, no smashed light and no dented or raised hood. In addition, Bono learns from the files, the driver at fault is divorced and had apparently been driving her new partner’s car.

The car insurer is Zurich Insurance. In fact, the ex-husband of the driver works there as a damage inspector. He sold the liability insurance policy to his wife’s new partner. If he, as she stated at the accident site, also analyzed the damage himself, has not been determined. To a series of questions put forward by the “Tages-Anzeiger” (Zurich daily newspaper), the insurance company answered: “We take no public position on current or pending cases.”

Immediately after the crash Bono’s lawyer makes a written request to Zurich Insurance to consign the car involved in the accident to the police. He also demands a criminal investigation. Neither occurs. The lawyer does not intercede because he

has no doubt that the accident and the health problems of his client are directly connected. He thinks it is a clear, uncomplicated case.

## **No chance of explanation**

He is to be mistaken: On the basis of the photographs, Zurich Insurance produces a biomechanical appraisal. Based on the established car body damages, the speed before impact is estimated at 10 km/h (6 mph). The resulting force is therefore set “in the range of slamming on the brakes.” Apparently Bono’s afflictions could not possibly have been caused by the accident. According to the police, the driver at fault made a statement on April 10, 2003 that she hit Bono’s car in the rear “driving at the speed of 20-30 km/h (12 to 18 mph).” On the day after the accident she had said it was 30 to 40 km/h (18-24 mph). Zurich Insurance did not try to get to the bottom of these inconsistencies.

However, the suspicion of fraud is so concrete for Bono’s legal protection insurance representative that she is awarded payment of 20,000 Swiss francs in order to hire an investigative detective. After a long silence the detection agency returns the assignment—along with the formal reasoning that they apparently were not able to get any information from the department of transportation. In the absence of success, only “a greatly reduced charge of 100 Swiss francs” is put on the bill. It turns out later that the detective has been contracted by Zurich on other cases.

On the advice of her attorney, the guilty (and previously convicted) driver makes no comment. So almost seven years after the accident, the inexplicable matter of whether the woman had been driving a different car than the one she presented as the “accident vehicle”, her new partner’s car, cannot be clarified by journalistic means. There is no evidence to be found on Bono’s car because it was bought by a dealer and exported to Eastern Europe. Only a criminal investigation could bring clarity, but the prosecution believes there is no reasonable suspicion.

## Part II:

### Lawyer loses her belief in the justice system

After the rear-end collision with serious consequences for her health and career, lawyer Caroline Bono goes to court and experiences the full rigidity of the justice system.



Caroline Bono lost her case in the commercial court (belongs to the Court of Appeals of the canton of Zurich), and in the **social security court**. Photo: Thomas Burla

Two weeks after the accident Caroline Bono is questioned in the Hirslanden hospital by an agent of Zurich Insurance. She explains to him how on November 19, 2002, she was stuck in front of a red light on Bürkliplatz when she heard an “incredible bang,” blacked out, later got out of her car and saw the badly dented and raised hood, realized that her car was hit from behind, and how she gave in to the request of the driver at fault to settle the case without the police and an accident report, because her head was throbbing. And how she wanted to drive home but had to stop a few minutes later because she felt nauseous and her neck hurt.

**“Yes, I lightly touched the brake.”**

Based on their discussion, the agent wrote a deposition. In his report, Bono had confirmed that her ve-

hicle, a Chrysler Voyager, did not move after the impact. Bono denies it. She had merely answered the question of whether she had had her foot on the brake with the following: “Yes, I lightly touched the brake, so that my car couldn’t roll forward.” The deposition was not put before her or her lawyer to sign. But it should play an important role in court.

Zurich Insurance is involved in the case in multiple ways: as accident and disability insurer for Caroline Bono as well as liability insurer of the driver at fault. The foundation of the court case is the bio-mechanical expert opinion (analysis of accident) produced by Zurich Insurance.

It is based on photographs made by Zurich Insurance 31 days after the accident. The pictures show the liable driver's lightly damaged automobile, which is insured by Zurich Insurance and is owned by her new partner. From the beginning, Bono is convinced that the car in the photographs is not the car that was involved in the accident. But she cannot prove her suspicions.

Zurich Insurance ceases payment of accident disability coverage in September 2003 with the following reasoning: "Based on the accident analysis, we view her afflictions as no longer a result of the accident." The insurance company does not deny that Bono suffers terrible pain and is completely unable to work. They are of the opinion, however, that this is not a consequence of the accident, but of the family and career pressure of which Bono was suffering at the time of the accident. Specifically: the care of four children, the dispute with the ex-husband over alimony and the performance expectations of her job. That all of the doctors who are treating Bono see the case differently did not seem to matter.

### **"Wild suspicion"**

Bono sues. But both the court of the city of Zurich (in a liability suit against Zurich Insurance Company) and the court of the Canton (in suit against Zurich Insurance as the accident insurer) protect the insurance company's arguments in the concurrent proceedings. The photographs of the only lightly damaged car show that the case deals with a commonplace accident that could not cause such serious injuries, and consequently, no damage liabilities. Bono's suspicion of manipulation is rejected by Zurich as "wild". "The decisive factor is that the insured person conceded that her vehicle did not move with the rear-end collision."

The court gives the order to produce an independent biomechanical report. However, this study done by professional experts is also based on photos of the lightly damaged vehicle. The report comes to the same unsurprising conclusion as Zurich Insurance: "Due to excessive internal stress ... we can rule out that the accident ... led to the described grievances and findings. Therefore, these must be traced back to another unknown factor, and cannot be attributed to biomechanical origins."

### **Impact falsely evaluated**

In summer 2007 Bono's doctor orders an examination with a new type of x-ray (FMRI). This made visible the injuries on her atlantoaxial joint that were never diagnosed before. In addition, cracks on three of the discs embracing the cervical spine are identified. Another x-ray shows a displaced cervical vertebra. These injuries were not identified on the images made immediately after the accident even though some of them were visible. The original diagnosis of a spinal cord contusion is confirmed. According to the doctor this portrayal of severe injuries suggests that the automobile crashed with a far greater impact than assumed by the expert opinion.

Bono now believes that she finally has decisive proof in her hands. The doctor writes in his report that the type of injury indicates that it is "securely within the realm of possibility" a direct consequence of the accident suffered. Bono's lawyer presents this piece of evidence on the day before the hearing to the federal insurance court. But it is not admitted as new evidence. It is too late; it cannot be delivered to the counterparty in time.

### **Decisive vote at the federal court**

At the trial on August 23, 2007, the presiding judge argues that it cannot be ruled out that such grievances could be the result of overburdening as a working mother of four children. He pronounces the final decision; the court dismisses Bono's complaint with 2 to 1 votes. It is also decided that Zurich Insurance's grounds for discontinuing payments one year after the accident because no further health improvements could be expected were justified. At that time Bono was 100 percent unable to work, today she can work 3 to 4 hours per day. Clearly an improvement had occurred. Zurich Insurance will not comment on this contradiction or other questions because of the ongoing liability trial.

On June 16, 2008 the liability trial reaches a first verdict. The commercial court also comes to close: there is no connection between the complaint and the accident – the ruling rests again on the biomechanical expert opinion. The commercial court refuses the FMRI report on the grounds that an x-ray could have been made earlier. Instead, a reference is found in the file to a torn ligament on the foot,

which Bono suffered 20 years before the accident. The judge accuses her of hiding this injury during the questioning. Similarly, her previous testimony to Zurich Insurance that after a 16-hour day on the computer she occasionally suffered from back tension is held against her. “Both statements would have been important during the judgment of the present case,” argued the court. “This omission shows that the plaintiff views her grievances exclusively as a result of the incident on November 19, 2002.” Nevertheless, the court, as it states in the testimony, had only asked Bono if she felt she was “generally healthy” before the accident, to which she agreed.

### **Court costs of around 100,000 Swiss francs**

The court costs of around 100,000 Swiss francs are imposed on Bono. Five judges partake in the judgment, three with a professional past or present in the insurance field.

Bono raises a complaint to the Court of Appeals on the judgment. However, in these proceedings the FMRI report is also not a part of the hearing; consequently the chances of success are slim. Also the hope of proving the suspected fraud of the car in a criminal investigation is destroyed. The prosecution sees no grounds of suspicion to warrant an investigation. The proceedings have shaken Bono’s confidence in the justice system. She writes in her diary: “I am supposed to have had, from one second to another, on November 19, 2002, problems with my left ankle that hadn’t bothered me in 20 years. These are supposed to have caused, similarly from one second to another, an almost unbearable pain in my head, neck and shoulders which made me completely bed-ridden and unable to work for the next three months. That I, in that second, coincidentally, also had a car accident, doesn’t seem to come into question for the court as the cause for my complaint.”

Part III:

## A Game of Cards: “Old Maid”

**A car accident in 2002 ruined the health of Zurich-based lawyer Caroline Bono. Her assumption that she was at least properly insured turns out to be an illusion.**



“The files concerning the dispute over Caroline Bono’s accident pile up to a big heap.” Photo: Thomas Burla

By conventional criteria Caroline Bono was well insured. She had taken out accident and illness daily allowance insurance as well as supplementary accident insurance by the Zurich Insurance. She had passenger insurance from Generali. The pension fund Columna would cover disability. And the driver at fault who crashed into Bono’s car in November 2002 was covered by Zurich Insurance’s liability insurance. With so many policies nothing could actually go wrong. Especially since Bono was not to blame for the accident: she stood innocently in front of a red light when she was hit from behind.

With the crash Bono’s promising career as a lawyer and university lecturer came to an abrupt end. She lost her job, can no longer cover the costs of her

household with four children and finally ended up on welfare. And what are the insurance companies doing?

Accident and disability: Zurich Insurance initially pays minimal disability compensation. After nine months the payments are discontinued on the grounds that there could be no expectation of improvement in her health. (At that time Bono was 100 percent unable to work; today she can work 3-4 hours daily.)

Instead of daily allowance for accidents Zurich is paying a daily allowance for illness, again at a low rate. After three months the payments are ceased for ten months, without providing a reason, which causes Bono additional difficulties. In the mean-

time, after some pressure, Zurich pays an outstanding 30,000 Swiss francs.

Zurich Insurance's view that Bono's complaints were not related to the accident, but rather a result of the stress of being a wife separated from her husband, a mother and full-time lawyer, were first shared by the social security court of the city of Zurich and later by the federal insurance court. Both rulings rest on the biomechanical report that was produced by Zurich Insurance – which was based on photographs that were taken 31 days after the accident and show only minimal damages on the vehicle of the driver at fault. From this report the court concludes that the impact of the collision was minor. In Bono's memory, the car had a badly dented front and a raised hood. She is nonetheless not able to undermine the suspicion of fraud. In legal terms, the accident and its severe consequences are therewith cleared up for good and no further insurance compensation is owed.

**Liability:** It is uncontested that it is a rear-end collision. Similarly it is uncontested that Bono is innocent. Hence, Zurich Insurance as liability insurer of the driver at fault pays Bono a 30,000 Swiss francs compensation payment for the total damages, and additionally, for a limited time, the hospital and doctors' bills. Further payments, such as for the necessary household assistance, meal service, increased deductibles for her personal medical insurance, costs for treatment, transportation and above all the salary loss, are excluded as of September 2003. Consequently, Bono's lawyer sues Zurich Insurance as liability insurer. The commercial court comes to the verdict that there is no proven connection between the accident and the health problems—once again based on the biomechanical report. Bono is obliged to pay Zurich Insurance 100,000 francs for trial costs—however the judgment is not yet enforceable. Bono has appealed at the Court of Appeals. Zurich Insurance is unwilling to answer questions about the ongoing case

**Social security disability insurance:** Because of her limited working capacity, Bono can no longer find an employment as a lawyer. In March 2005 she opens a private practice to free herself from welfare, and she succeeds. She particularly wants to offer legal advice to accident victims in similarly

desperate situations. Her friends advance the money she lacks for living expenses.

In April 2006 she has a medical examination. Result: her complaints are without doubt the consequence of the accident she suffered. Disability insurance puts the case on hold. They are waiting for the final verdict in the trial against Zurich Insurance, the main accident insurer.

In July 2006—three and a half years after the accident—disability insurance invites Bono to a rehabilitation discussion. She is praised for becoming self-employed and reintegrating herself into the working world at her own cost. Disability insurance promises to immediately offer an annuity and finances the already acquired office furniture. Then nothing happens. And also nothing happens when at the end of August 2007 the final verdict of the accident insurance hearing is delivered.

During this time the contact person at disability insurance changes. In January 2009 Bono learns that she should be examined once again, this time at a center in Bern that is known for its strict judgments against the insured. Bono's lawyer rejects the examiner.

She is offered an examination at a center in Zurich on June 17. Her lawyer also rejects this request. The examiner, Dr. J., is an internist and therefore not qualified to judge the complex neurological problems that are presented in Bono's case. Even in severe cases of whiplash he is “practically never been able to come to a conclusion that benefits the injured party.” In 2007 and 2008 the center where J. is engaged produced a total of 800 reports for the disability insurance amounting to a value of 7.2 million Swiss francs, and thus its business is strongly dependent on contracts with the state. The lawyer requests that disability insurance arranges an independent medical evaluation. A response has not been received to date. In fact six and a half years after the accident Bono has not yet received a franc of disability payment.

**Pension Fund and passenger insurance:** Here the circle closes. The Pension Fund Columna does not pay any pension benefits because they are waiting for the decision of disability insurance. Generali (passenger insurance) does not pay because the biomechanical report of Zurich Insurance refutes a

connection between the accident and the medical complaints. Therefore no compensation is awarded.

So Bono's supposed certainty of being sufficiently insured turns out to be an illusion. She was professionally successful. She was innocently involved in an accident. Since then she suffers from irreparable physical and degenerative damages. She lost almost everything—and can nonetheless expect little from the insurance. At least her legal insurance (Coop) has covered the legal fees.

The most striking thing in the Bono case is the shift of the financial burden. Thanks to favorable legal judgments, Zurich Insurance was able to save capital costs. Instead, medical insurance, welfare and

Bono herself are paying—and maybe one day disability insurance will pay for the consequences of the accident that from a legal standpoint never was one.

Because of her health problems Bono no longer can insure herself as a self-employed lawyer. She has neither accident nor illness daily allowance insurance; she has neither income loss nor life insurance. In addition, Zurich Insurance will no longer insure her on the grounds of her being a “medical risk” — the same Zurich Insurance Company that held the position that since 2003 Bono suffered no physical consequences of the accident and therefore had no significant incapacity to work.

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