

DO LOUD PIPES

# SAVE LIVES?

A BIKER'S GUIDE TO  
ACCIDENTS AND INJURIES



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## *DISCLAIMER*

I am not allowed to give legal advice in this book. What I can do is share with you knowledge I have from over three decades as an accident injury attorney in general, and a motorcycle accident attorney in specific. Please do not take anything in this book to be legal advice unless you hire me as your attorney and I have agreed, in writing, to accept your case.

I do not intend to interfere with any legal relationship you already have. If you already have legal representation and this book raises questions for you, discuss them with your lawyer. My firm normally won't accept cases in which another attorney has been involved. If you do not have an attorney, you will find my firm's contact information at the back of the book.

## INTRODUCTION

### KICK STANDS & WITNESS STANDS

I think what I love most about this book is that it lets me combine my two great loves in life: motorcycles and trial law. I am a second-generation trial lawyer. When I was in high school, I would accompany my dad to court when he tried cases to a jury. I got to see first hand how a plaintiff trial lawyer worked. My dad is a great lawyer and my mentor. I knew even as a teenager that I wanted to be a trial lawyer like him.

When I got to law school, I loved learning about cases in which the average person who had been needlessly injured could hold even the rich and powerful accountable for their wrongful acts. Heady stuff for a young man with big dreams.

When I wasn't learning from my dad or studying, I was on my Harley, winding through town, flying down the highway, exploring back roads . . . I rode anywhere and everywhere I could. To this day I hang out with my biker friends, keep my bike in good condition, belong to several motorcycle organizations, and ride whenever I can.

As a motorcycle enthusiast and lifetime rider I have, over the years, amassed an expansive base of knowledge and experience that I believe is helpful to any rider – new or veteran. I have catalogued my experience and then complemented it with a collection of the best of the basics from books, websites, and folks who are out there riding their bikes every day. I interviewed riders from a variety of ages, geographic areas, and levels of expertise. It is said that one learns best by teaching. I hope you find this book as helpful and informative to read as I did to write.

The recipe to staying safe on a bike is two parts awareness, two parts skill, and one part luck. I am providing you with real-world tips and recommendations on how to sharpen your awareness and hone your skill. And in large part, by becoming a smart rider, you make much of your own luck. If, however, your luck runs out, you will need different kinds of tips. In the back half of this book, I have included information on choosing insurance coverage and what you can do to enhance your chances of getting a fair insurance award or winning an accident case against a negligent driver. What you will read here is an abbreviated and summarized version of what can be found in my book [The 7 Biggest Mistakes That Can Wreck Your Massachusetts Accident Case](#). If you would like further details on any of the topics covered or would simply like to have a guidebook that walks you step by step through the accident injury claim process, you will find what you need in [7 Mistakes](#).

I guess it's all destiny. I was clearly destined to ride. I love motorcycles and everything related to them. And I was predestined to be a plaintiff trial lawyer. I remember my grandfather telling me stories about how my great grandfather, an Irish immigrant, was grievously injured while working in a textile mill. He ultimately died as a result of his injuries, leaving behind a young widow and four children. When I began to study law, my path became clear. The stories about my great grandfather and my experiences with my dad have led me to seek justice for people needlessly injured as a result of the carelessness of others.

I practice law and I ride. As a rider and a lawyer who has represented hundreds of injured motorcyclists, I am painfully and viscerally aware of an overriding fact: The same accident that leaves a motorist merely bruised or shaken can be catastrophic for a

biker. Please take the time and effort to become a smarter rider, and to be prepared if –  
God forbid – you do find yourself the victim of a driver's negligence.

## CHAPTER 1

### RIDING IN CARS – THE DANGER OF COMPLACENCY

*. . . [This] isn't really advice, but more of an observation. When I started riding [my motorcycle] to work, I started noticing how many minor accidents occurred in the relatively short (seven miles) commute to my office. I'd see them all of the time. They all looked the same: two cars pulled over to the side of the road, one with a bent bumper and the other with a dent, both drivers on their cell phones, probably calling the police, insurance or family. No one is hurt. One driver (sometimes both) looks mad; both are upset about being inconvenienced. They'll get to work or get home late, have the hassle of having to take the car to a body shop, and maybe have to pay a couple hundred dollar deductible. I've been in a few accidents like this myself, where my car was hit by an inattentive driver. But when I look at those dents and bent bumpers and consider what the same impact would do to me on a motorcycle, it's sobering. It wouldn't be an inconvenience; it would be a crippling injury. (FK)*

Riding in cars has made us complacent. We motor about, stabilized by four wheels, protected by seatbelts, airbags, treated glass, strong plastic, and metal, comfortable in our relative safety. An acquaintance of mine was able to list at least three instances off the top of her head when she had been involved in a small accident with little or no damage to the car and none to herself. Even her two more serious accidents – one with a red light runner and one with a deer – which totaled the cars, left her virtually unscathed.

Think of the number of “fender benders” you or your friends have walked away from with nothing more than an elevated heart rate. So we relax. We know we have the

protection of our cars. We believe we can pay a bit more attention to the radio, our phone, that relationship, or the promotion we may or may not get. We know we can swerve with stability, brake quickly, turn sharply. If we miscalculate, seatbelts and airbags will more than likely protect us from much harm.

Not so with motorcycles.

Please don't misunderstand me. Auto fatalities happen every day. I'm not saying that driving can't be dangerous, nor am I in any way belittling those injured in auto accidents. What I am saying is that this complacency has led to a nation of drivers who do not pay nearly enough attention to the road. If you ride a motorcycle, this affects you every day and in many ways. The rider quoted at the beginning of this chapter substantiates what we should already know: an accident that leaves a car or truck driver unscathed can leave a biker to seriously injured, crippled, or dead. According to the National Highway Traffic Safety Association, "[m]otorcycle fatalities have been rising steadily since 1997."<sup>1</sup> We are now looking at almost 5,000 recorded fatalities a year.

While writing this book, I polled people who are out there riding every day, comparing their experiences and opinions to mine. When I compile the information, a pattern develops. The key to staying safe – to staying alive – on a motorcycle is responsibility. *You* must be responsible for your safety on the road. Take safety courses. Learn how to swerve, turn, and stop. Most importantly, be vigilant. Almost every rider I spoke with shared one piece of advice in common, pretty much word for word: *Drive as*

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<sup>1</sup> United States. Department of Transportation. U.S. Department of Transportation Action Plan to Reduce Motorcycle Fatalities. Washington, D.C. November 2007. <[www.nhtsa.gov](http://www.nhtsa.gov)>

*though everyone else on the road is out to kill you.* Other drivers are not watching out for you. You must watch out for yourself.

## CHAPTER 2

### WHY, WHERE, AND WHAT TO LEARN

*I think the best thing a new biker can do, hands down, is to take a Motorcycle Safety Course ([through] MSF). (MM)*

*I'll second the MSF thing; in fact, I've been riding for 20 years and am considering taking the course to find out what I don't know, and what I know already that just ain't so, y'know? (DJ)*

*I'll third or fourth the MSF comments. It is, without a doubt, THE most effective tool for learning to ride. (KH)*

The best advice I can give you about how to ride safely is: Take a safety course. Other experts agree. Three of the Motorcycle Safety Foundation's (MSF) Top Five Tips are related to learning. Respected authors like David Hough encourage it in articles, in books, and in person. Hough maintains – and I agree – that riding a motorcycle is a thinking game. To keep your game, you must keep learning and re-learning. The second-best way to do this is to read as much as you can on the subject. The best way is to take safety courses. Regularly.

I know what some – perhaps many – of you are thinking. You don't need to take a safety course. You're self-taught or you learned from a friend who is a damn fine rider. Perhaps you've been riding for years and feel you've learned everything you need from experience. Trial and error are, indeed, fine teachers. But let me share some startling information with you.

The Hurt report discovered that the bikers in 92 percent of all accidents they investigated had no formal training. They were all either self-taught or learned from

family and friends. Two-thirds of all single-vehicle accidents were caused by operator error. “Well, that’s fine,” you may say. “The Hurt report is decades old. And besides – most accident are caused by something jumping or swerving in front of me. How can I be blamed for that?” I’m afraid that is not entirely accurate.

The National Highway Traffic Safety Association (NHTSA) conducted motorcycle accident studies in the early 2000’s and found much the same as Hurt. At least half of all fatalities related to problems negotiating a curve. And over half of all accidents involved fixed objects. Nothing jumped out at anybody.

In any given collision situation, typical avoidance time is two seconds or less. We must begin to take responsibility for our riding. How many lives could be saved by simple refresher courses? By learning and re-learning swerving techniques or how to properly negotiate a curve or increasing awareness?

If you don’t know where to look for a safety course, start with the Motorcycle Safety Foundation. The MSF provides both beginner and experienced courses. They are taught all over the United States and are recommended by the AMA and countless fellow riders. If you need a bit more convincing, let me share these thoughts from motojournalist Bill Kresnak:

I've been riding more than 20 years. I'm a motojournalist paid to ride motorcycles. And I took the Experienced RiderCourse just two years ago. So why take it again?

The course can be a humbling experience. No matter how good you think you are, chances are good the course shows you where you are weak in your riding. Everyone wants to think he or she is a good rider, but we can all improve somewhere.<sup>2</sup>

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<sup>2</sup> <http://www.AMADirectlink.com/roadride/NewRider/ERC.asp>

Kresnak reiterates that research repeatedly shows that most crashers crash because they don't know how to brake, swerve, and corner. Once you know where you need the most work, you can find courses specifically designed to develop certain skill sets. Need help deciding where you need help and don't have a general course readily available? Look at what scares you and practice that.

Practice, practice, and practice some more. Take basic safety courses and focused workshops. Then put your education into action and make it habit.

Want to add some extra learning between courses or while you're waiting for the right class to become available? Read. Find guidebooks, travelogues, novels – learn as much as you can from as many angles and sources as you can. I highly recommend David L. Hough's books, which heavily influenced both my riding and my writing. The MSF website<sup>3</sup> is full of videos and highlights and has a comprehensive free online library. The MSF site will also help you find a safety course in your state. You may also see the appendices of this book for more reading, course, and workshop recommendations.

When looking at safety, it is important to consider the two major types and to know which your vehicle is best suited for. Secondary safety is what we are most familiar with. It concerns itself with accident survival. Trust me – cars and trucks are far better suited to this than motorcycles. While it is important to know how to evade or handle an oncoming crisis, what we as riders really need to do is focus on primary safety. Primary safety concerns itself with identifying and avoiding hazards so that there will be fewer accidents to survive.

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<sup>3</sup> [www.msf-usa.org](http://www.msf-usa.org)

Once you have the concepts of primary and secondary safety under your belt, it is also important to look at what you can control versus what you can't. You cannot control faulty equipment, farm fences in disrepair, bad roads, or other drivers. What you can control is the way(s) you ride.

I may sound like a broken record, but perhaps if I say these things often enough, people will start listening. I am not speaking alone. The Hurt report showed that most bikers involved in a collision simply couldn't avoid it. They tended to over-brake or under-brake; most couldn't counter steer or swerve. Hough puts forth that you have four options with which to evade a collision: accelerate, swerve, brake, maintain. So you had better know how to do all of these things. Even better though, is to increase your levels of skill and awareness so you rarely have to test these evasion tactics. The goal is to avoid the situations that lead to collision. The NHTSA concurs. They assert that where motorcycle safety is concerned, prevention is key. They encourage bikers to take safety training courses, educate themselves, be aware, and keep their bikes in shape.

Our crashes are too often caused by our lack. We lack either skill or awareness – or both. Ask yourself: Do you know how to best negotiate potholes, pavement ridges, debris, and road surface changes? Do you know how to anticipate and react to animals in your path? Are you familiar with techniques for riding in inclement weather? Do you know how to handle a puncture flat? Do you know how all the instruments and gauges on your bike work? These are the things you can control.

Remember what I said in the introduction: The recipe to staying safe on a bike is two parts awareness, two parts skill, and one part luck; and we make much of our own luck by taking responsibility for our riding, increasing our skill and awareness. Hough

talks about how even though European motorcyclists tend to ride faster on more difficult roadways congested with traffic, most of their accident and fatality rates are significantly lower than ours. The difference? Attitude.

In the U.S., many people have too much of an *it wasn't my fault* attitude. After a crash, the suddenly indignant rider crawls out from under the broken plastic, sniveling, *It wasn't my fault. It happened because the* (circle your favorite villain) *dealer / manufacturer / salesman / mechanic / tire / lubricant / cow / road crew / license department / helmet / farmer / stupid driver / loose gravel / other did it to me.*

The European attitude is more, *If I do something dumb and crash, it's my own fault.* That "I'm responsible" attitude is quite evident in both road construction and riding gear. European road engineers don't waste money putting up expensive signs and safety barriers. It's up to the individual rider to scrutinize the corner ahead, spot the wandering cow, observe the wet cobblestones, make room for downhill traffic, and select an appropriate speed and lean angle to avoid going off a cliff.<sup>4</sup>

In order to stay safe and whole on our bikes, we must stop looking for who to blame for our accidents and commit to those things we can control:

Education & Training  
Awareness  
Lack of Impairment  
Upkeep of Bike

For those times when luck and skill both run out, I have added a second part to this book that will guide you through the process of making an accident injury claim.

**Upkeep of Bike.** Know how your bike works. Learn how everything is supposed to function and how everything needs to be maintained. Find out when parts need to be replaced and how often to schedule routine maintenance. Learn what you can do and

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<sup>4</sup> David L. Hough. More Proficient Motorcycling. Irvine, California: Bowtie Press, 2003. pp. 57-58

what is best to save for professional mechanics. In the appendices you will find MFS's motorcycle inspection checklist. It's called T-CLOCS (Tires & Wheels, Controls, Lights, Oil, Chassis, Stands) and will guide you through what you need to look at and look for to keep your bike in good working order.

**Lack of Impairment.** I'm talking about drugs and alcohol. Just don't do it. You are an adult and what you choose to do in your own bubble of influence is your business. But if you have picked up this book, you are at least in some way interested in staying alive on your bike. Regardless of the moral, ethical, or legal ramifications, drugs and alcohol change the way your brain works. You, your potential passengers, and anyone in your path needs your brain to be fully functioning when you are on your bike. (See Chapter 7 for further discussion.)

**Awareness.** I cannot reiterate often enough or profoundly enough how important this is. You must always be responsible for your riding. For the most part it is true that we are virtually invisible to the drivers of other vehicles. I'm not saying this is fair, but it is pointless for me to bemoan or belabor the fact. What it is, is further motivation and emphasis that we alone are responsible for our safety on the road.

Conscious awareness is how we defend against road hypnosis. No matter how many times you travel a road, your brain will not be able to accurately remember every detail, every curve. Your awareness should be at the same level regardless of if you are riding into the unknown or the known. You must stay alert so that you can be as prepared for the curve you didn't remember as you are for the one you didn't know was there.

Be aware of your options. You have choices involving speed, passing, cornering, etc. When in doubt, choose the safer route. Be aware of when and where your options are limited. If you are planning to ride in unfamiliar territory, study up on local terrain and hazards. If you ride where there are cars and trucks, learn about vehicle-specific blind spots. Get an idea of where and how big they are and then stay out of them. I cannot tell you the number of times, when I'm in my car, a motorcycle has jumped into view from my blind spot. Even as a rider myself, with all the care I take to be aware of bikes when I am in my car – if you sneak into my blind spot while I am looking elsewhere, I am not going to know you are there. If you sit quietly in my blind spot, for an extended period of time I am going to forget you were there. The same would be true for another car. And I'm sure the same is true for you when you are in your car. This time the problem isn't "them" in their cars, it is we in their blind spot.

Become familiar with the relationship between your sight distance, your speed, and your ability to stop<sup>5</sup>. Always keep your speed within your sight distance and be aware of how the ratio changes. You need to keep your speed within your sight distance in order to avoid obstacles or make quick changes. A high level of awareness can help you avoid disaster through misleading landscape and invisible curves. Don't become complacent just because your bike stops quickly or handles well. Remember that when you are on your bike, your awareness and your vision are inexorably intertwined. Ride so that you always have the greatest vision possible. Take curves from the outside. Don't let impatience goad you into riding tightly on the traffic ahead of you; you can lose

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<sup>5</sup> For excellent pictures and diagrams of this concept, see Hough.

sight of large and dangerous bits of road that way. Keep as much sight distance as possible, even if it means taking a deep breath, relaxing, and falling back from traffic.

**Education & Training.** Get the proper training. Continually educate yourself. Training courses can help exponentially increase your awareness and ability to focus on the ride. Classes, workshops, and books can all help you improve your skill sets. You can learn how to anticipate, spot, and negotiate road hazards such as water, mud, gravel, uneven pavement, and debris.

If you want to ride with a group, learn standard hand signals. And if you are riding with a group, make sure you are all using the same signals. Each method and each group's use of that method can vary slightly.<sup>6</sup>

Finally, learn about proper riding attire. Wear a helmet. It may not be “cool,” but it will protect you from a huge range of head, neck, and face injuries. Wear eye protection. High-speed wind impairs eyesight through an inability to keep the eyes wide open, dry eyes, accelerated tear production, and potential debris in the eye. Hurt, et. al. discovered that in the accidents they studied, 73 percent of the riders had no eye protection. The creators of the report stipulated that in many of these cases, impaired eyesight affected the biker's ability to avoid hazards.

Wear appropriate shoes and clothes. The proper gear can protect you from sunburn, windburn, exhaust burns, weather, gravel and other debris, and even road rash.

This is another area where Hough compares American and European riders.

European riders also seem to understand that even with good tactics, there is always the risk of taking a tumble. So, most European riders wear racing-weight leathers, abrasion-resistant boots and gloves, and a high-quality

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<sup>6</sup> See the appendix for a list of Hand Signal web resources.

helmet. By comparison, you'll see many Americans wearing denim or even shorts and a T-shirt. If you look around at race spectators in Europe, it's easy to spot the Germans in their heavy leathers. Buying expensive riding gear doesn't make you a better rider, but it certainly says something about your attitude toward the risks.<sup>7</sup>

I know that many of us have a picture in our head of the cool, free, and easy biker: a la *Easy Rider*. But following the advice I offer will help you become a smarter rider. Being a smarter rider makes you a safer rider. A little bit of knowledge can go a long way, and a lot of knowledge can take you even further toward a long and safe riding life.

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<sup>7</sup> Hough, pp. 58-59

## CHAPTER 3

### VIGILANCE

*Best tip I ever got was this: Be \*paranoid\*. If you assume every other driver on the road is actively \*trying\* to kill you, you'll spot bad situations a long way away and be better able to avoid them. (Duane)*

*Always ride with the assumption that you are literally invisible to everyone else on the road. (DS)*

*[B]ike riders have to be the most defensive "drivers" on the road. People "look through" you when you're on a bike, so I always drive like the other guy is going to make the mistake. (RW)*

*I think as long as you ride with the mind set that someone is going to actively try to kill you at some point during the ride, you stay pretty safe and have the required level of awareness. (FK)*

Riding a motorcycle is an act of the mind at least as much as it is of the body and bike. Your bike may be in tip-top shape and you may have the moves down, but a single moment of lost awareness can mean the difference between life and death. If you are not an experienced rider this may sound extreme, but over and over again other veteran bikers confirm this: Drive as if everyone else is out to kill you.

According to the Hurt report, over three-fourths of all accidents they studied were collisions, usually with passenger automobiles. Around two-thirds of multi-vehicle accidents resulted from some kind of violation of the motorcycle's right-of-way. The comments of motorists are similar enough to be almost mantric: "I just didn't see him."

You must, *must* be responsible for your own safety on the road. In addition to the above multi-vehicle crash findings, the Hurt report discovered that over three-fourths of

road hazards are *within the line of sight* of the biker. He or she simply does not notice them in time – or sometimes at all.

I'm sure you've heard the debate about whether one should be an "offensive" or "defensive" driver. I don't like either of these. I believe they have their own foibles and both can lead to unhelpful attitudes. What we need is to be *active* drivers. As bikers, we must participate fully in the riding process every moment of every moment.

You are your own – and only – navigational safety system. The riding environment is dynamic. Regardless of how often you drive a certain stretch of road, you can never truly or fully know what is going to appear over the next rise or around the next bend. What was true yesterday is not necessarily true today. And I'm not sure there is a place in the world where the weather doesn't at least occasionally change on a dime.

The brain is a fascinating piece of work. It will fill in missing pieces of a picture so that we comprehend the whole, sometimes so completely that we are unaware of the missing pieces. If information is missing, the brain will fill in the gaps with either its best guess or the information it had the last time we saw this picture. When you ride a familiar path, therefore, your brain will eventually fill in the road and you will stop seeing it for yourself. What happens then if the road doesn't do what your brain assumes it will? It only takes once. "Highway hypnosis" has become a common part of our lexicon. If I fall into that lull in my car, while dangerous, I at least have some protection. The random pothole, cattle grate, or small animal will usually do little more than jar me back to my senses. If I do skid or have to stop quickly, my car will most likely not flip over and my seatbelt keeps me in my seat. When I'm on my bike, however, these

hazards become deadly. We must constantly wake ourselves from this stupor and see the road anew.

This idea of vigilance converges directly with active driving. You must not only strive to maintain a heightened awareness, but you must also drive in a way that compliments your awareness, and use your awareness to inform your driving. When, for instance, your view closes up, your sight line diminishes. Common sense, yes? Knowing this is almost pointless, however, if we don't take the next step and slow down. We have lost valuable time and distance in our speed-to-stopping-distance ratio. You cannot ever possibly *know* what is ahead of you on the road. Drive like you know that.

David Hough compares motorcycling to flying a combat mission.

We might not think of riding in traffic as 'combat,' but that's a pretty good description of what goes on. Car drivers tend to ignore motorcycles and run right into us. Motorcyclists have always been at risk among other vehicles, and it's getting worse. On top of the usual transgressions such as drivers running stop signs and failing to signal, more people today are frustrated and angry, and it shows in their driving.

I submit that riding a motorcycle is just as serious as flying an airplane. A motorcyclist can't afford to make mistakes any more than a military fighter pilot can.<sup>8</sup>

Sounds like a call to vigilance to me.

If we combine knowledge, skill, and awareness, we in large part remove the need for evasive actions. You still need to learn and practice evasive maneuvers – the ride is always unpredictable, even at our most vigilant. But if we are skilled riders and ratchet up our awareness, we can ride through life (mostly) avoiding, rather than evading

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<sup>8</sup> David L. Hough. More Proficient Motorcycling. Irvine, California: Bowtie Press, 2003. pp. 29-30

disaster. We must pay attention, read, take classes, and talk to other riders. And don't stop there; even talk with people who frequently walk outdoors – anyone who has occasion to become familiar with how landscapes and roadways can change and what clues can reveal those changes. If we can learn to see and recognize these clues, we will less often have to test our maneuverability, because we will see the obstacles before they happen. I would much rather avoid an accident than engage in a last-minute battle to evade or survive one.

This active driving is key for more than just single-vehicle dangers: weather, surface changes, line-of-sight issues, obstacles, etc. We must also be this vigilant and aware on our city roadways and highways.

This means expecting people to run red lights, expecting that car on the side street to suddenly pull out in front of you, expecting the car beside you on the interstate to change lanes on top of you, expecting the guy that's tailgating you to not stop when you do... (FK)

While I have garnered and developed these concepts over decades of riding, they are neither original nor unique. Several mnemonics now exist to help you remember how to maintain a heightened sense of awareness while you drive. For the Motorcycle Safety Foundation (MSF) it's SEE:

S – Search  
E – Evaluate  
E – Execute

For many military types it's SPIDE:

S – Search  
P – Predict  
I – Identify  
D – Decide  
E – Execute

And for David Hough it's OODA<sup>9</sup>:

O – Observe

O – Orient

D – Decide

A – Act

Choose whatever system works best for you and use it constantly. Make the words your mantra and the actions your habit.

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<sup>9</sup> Hough, p. 32

## CHAPTER 4

### STOPPING

*The two best rules of any "riding" sport, etc....  
Know how to turn; and know how to stop. Those are the two biggest things. The rest is gravy. (DJS)*

One of the most obvious tools you have to avoid collisions is effective braking. The key word here is *effective*. Braking on a motorcycle can be tricky business. Trial and error can be decent and effective teachers, but they are better at teaching you how *not* to brake. If you've never taken a safety course and actually learned how to brake correctly, please do so. Improper braking techniques can lead to not only failed collision avoidance, but to their own set of damage and injury.

There are several steps you can take toward being better at braking:

Learn your bike. Every bike handles differently, just as every biker handles a bike differently. Discover how your motorcycle brakes on different terrain, in different weather, and at different tire pressures. Find out how your bike – and your body – reacts to braking at different speeds. How does the balance shift? Where does your weight need to be? There are some things I recommend learning, even if just in theory. For instance – if necessary, can you lay your bike down with the least damage to you both?

Learn how to appropriately use both brakes and begin to consciously do so. Once it becomes habit, force yourself to become conscious of it again. This will keep your skills fresh and ramp up your vigilance. Find a safe place to practice and spend a couple hours practicing quick stops. Continue to periodically practice.

Most importantly, know your speed-to-stopping ratio. This changes, based on the size and weight of the bike, the size and weight of the rider, if a passenger is riding, the weather, and the terrain. Never ride faster than the sight line of your ability to stop, and remember that sight distance always decreases around curves. Learn the equation, then get it in your head: “When I am going X fast, it will take Y far or Z long for me to stop.” You don’t want to be trying to work this one out in an emergency situation. Trust me. This simple little bit of mathematics can save your life.

## CHAPTER 5

### TURNING & SWERVING

*You don't "steer" per se. You lean. You press. You guide. The only times you actually steer are at low speeds and/or in extremely tight turns. But for going around a curve? You actually push the handlebars in the direction you want to go.*  
(KH)

Another tool you need to have in your bag of tricks is successful swerving.

Swerving is, in effect, a series of quick turns. Learning to properly turn, then, serves two purposes. It helps you stay upright and on the road, and can be used to avoid obstructions that appear along your path.

With a little knowledge and practice, you can raise your safety quotient exponentially. Become familiar with the definition and proper use of apex lines, throttling, leaning, countersteering, traction, braking, and sight lines. All of these are parts of well executed turns.

**Apex Lines.** The apex is the center of your turn and the tightest part of the curve. The apex line is the path you follow as you navigate your turn. When used properly, you can flatten out your turn to make it as smooth and easy as possible. The safest way to take a turn is to start it at the outside edge. An ideal apex line is one that curves as gently as possible through the apex. If, for instance, you are turning right, you will hug the inside line of your lane at the beginning of your turn, make/follow a gradual curve through the apex and on toward the outside edge of the curve's end.

**Throttling.** The throttle is the equivalent to a car's gas pedal. When you throttle, you "gas" the engine. Although you need to ease up on the throttle as you countersteer,

when you take the curve you want to maintain a leading throttle – also called rolling the throttle – throughout the turn. Basically, you will keep a steady speed or slightly increase your speed as you follow your curve. This will help stabilize your bike throughout the turn. This is an action you will want especially to practice – throttling is a delicate action. If you rev the engine too suddenly you can destabilize your bike or even pop into an accidental wheelie – probably *not* something you want to do around a curve.

**Countersteering and Leaning.** Motorcycles turn differently than cars. When you turn a car's steering wheel, the wheels turn, taking the car with them. Turning on a motorcycle is a much subtler function. A good motorcycle turn is made through a subtle combination of countersteering, leaning, and steering. Countersteering and leaning work in conjunction to allow you to make your turns smoothly and safely; you need to lean into a turn to take it properly. The smoothest way to make all these things happen is as follows: As you approach your turn, make the slightest shift of your handlebars to the direction *opposite* of your turn. This offers much greater ease in leaning the bike, which again, you must do before you make the turn. Once you are into your lean, you then turn your handlebars into the direction of your turn. As you come out of your turn, you straighten your wheel to come out of the lean and head happily on down the road.

**Traction.** Traction changes when you turn. Your center of gravity shifts and your tires' placement on the road surface changes. Learn your bike. Become familiar with how your bike moves and turns on dirt, gravel, concrete, asphalt, grass, sand – any surface you can think of. If you have an idea of how your bike will react, you will better know how to shift your actions for each turn and what adjustments to make if your surface suddenly changes.

**Braking.** Make friends with your front brake. If you use this brake incorrectly, you can throw yourself right over your own handlebars. The front brake, however, is another essential component to effective turns and swerves. When you are turning, you should smoothly apply the front brake just before your turn and release it just before your lean. When swerving, it's important to know not only how to make the necessarily quick braking maneuvers, but when. You don't ever want to brake and swerve at the same time. This is a recipe for disaster. Always brake just before or after you swerve.

**Sight Lines.** As we have discussed, your sight line is important to a number of functions. You can only plan for what you can see on the road ahead of you. Just out of your line of sight there may be a surface change, a pothole, an obstruction, or a rather inconvenient lack of road. Remember that your sight distance decreases around curves and adjust your speed accordingly. If you are taking a blind curve, just assume that your turn radius is going to tighten, and again reduce your speed accordingly. Better to lose some time and take a potentially dangerous curve with caution than to keep up with your mates only to slide out on unexpected gravel or go flying off a suddenly nonexistent pathway.

Finally, you cannot see what you are not looking at. When we start riding, the instinct is to watch the road just beneath our tire as we turn, or to keep a nervous eye on the pavement toward which we are leaning. You must take in as much visual information as possible. Trust your bike and your body. Your bike will go where you are looking. Keep your eyes level with the horizon and see your turn. (This will also help prevent you from over-leaning.) Keep the roadway in enough sight to watch for any obstructions or surface changes, but focus on your turn.

The best way to get good at turning is to practice. Take a class that focuses on cornering. Find a place to practice emergency swerves. Learn to turn with skill and vigilance. Remember to gently use your front brake to get to cornering speed, ease on the throttle as you counterturn, then delicately roll the throttle throughout the curve, all the while seeing your turn and keeping your eyes level with the horizon.

## CHAPTER 6

### ALCOHOL

*Alcohol is a greater risk factor for fatal crashes involving motorcycles than [any] other types of vehicle operation. (NHTSA)*

The essence of this chapter can be summed up in one sentence: Never drive under the influence. Period. A life-long rider from St. Louis shared with me that if he had to be concise, he would share only two things with other bikers. The first was, “Never EVER ride a bike if you’ve been drinking.” Even dedicated partiers I know put their party on hold when they are on their bikes. How much is too much? The answer is yes. If you are going to ride your bike, just don’t drink.

Think the position sounds a bit extreme? The Hurt report concluded back in the ‘70s that almost half of all motorcycle fatalities involved alcohol. Things haven’t changed much. In 2001 the NHTSA compiled motorcycle accident statistics and found a sobering – literally – trend in fatal crashes. Riders who died under the influence exhibited higher rates of intoxication than any other drivers. And in 2005 NHTSA reports showed that one in three motorcycle fatalities involved alcohol. That is astounding to me when you consider the lack of protection you have on a bike. On the other hand, we all know that alcohol impairs your judgment. Going to a party? If you think you won’t be able to stay out of the booze or off your bike, don’t even take it out.

Anyone who has a buddy who drinks knows this simple fact: When you drink, you get stupid. Stupid is not what you want to be on a bike. Riding a motorcycle is inherently a risk-taking venture. When you drink, you add to the risk quotient by

potentially making irresponsible choices like skipping protective gear, riding too fast, and getting on your bike in the first place.

So if we know these facts and are aware of these statistics, why do so many of us still mount our bikes under the influence? An NHTSA Focus Group Study in November of 2002 discovered that bikers tend to care more about their bikes than about their own safety. Most motorcycle owners simply won't leave their bikes, find another way home, and return for the bike when they are sober. There are only two solutions to this problem: If we cannot bear the thought of leaving our bike overnight, we must either

A) leave our motorcycles at home if we know – or even think – we may be drinking that night

OR

B) find the discipline and will to not drink when we are out with our bikes.

David Hough tells the story of chatting one night with an assistant coroner. While he hadn't kept hard statistics, the coroner estimated that 2/3 of the motorcycle fatalities he tended had alcohol in the blood. Once again, sobering odds. Inebriated drivers as often as not walk away from their accidents to, hopefully, drive smarter another day. Motorcyclists rarely get that opportunity. Chances are that the risks you take or mistakes you make under the influence will lead to permanent injury or death.

Look. It's fairly simple. Riding a motorcycle at all – let alone staying safe and whole on one – requires skill and judgment. Alcohol impairs both.

Here's a fact sheet from the MSF. Share it with any of your friends who still think a little bit of partying won't affect the way they ride.



## **QUICK TIPS: The Importance of Riding Unimpaired by Alcohol or Other Drugs**

### **Theory: Alcohol And Motorcycles Are Incompatible**

- At a BAC\* of 0.01 to 0.04%, judgment begins to lessen, the drinker is less critical of their own actions, reaction time is slowed, and indications of mental relaxation may appear.
- At a BAC of 0.05 to 0.07%, judgment is not sound, thinking and reasoning powers are not clear, and the ability to perform complex skills is lessened.
- At a BAC of 0.08% or above, judgment and reasoning powers are severely hampered, and the individual cannot complete common simple tasks without error.

### **Proof: Statistics From Recent Studies (by NHTSA, Florida, Kentucky, and Australia)**

- Having any alcohol in one's body increases the chance of crashing by five times.
- Having a BAC greater than 0.05% increases the risk of crashing about forty-fold.
- 46 percent of all motorcyclists killed in crashes were using alcohol.
- One fourth of all fatal alcohol-related motorcycle crashes involve motorcyclists running off the road, overturning, or falling from the motorcycle rather than striking another object.

### **Explanation: Alcohol Affects Your Ability To “SEE”**

SEE<sup>SM</sup> is the acronym for MSF's strategy to help motorcycle riders maintain a safety margin as well as remain ready and able to respond properly to traffic situations. SEE stands for:

- Search for hazards that might lead to trouble.

- Evaluate how the hazards might interact to create risk; prioritize multiple hazards to deal with one at a time.
- Execute an action to maintain a margin of safety.

Alcohol affects these three human elements of safe motorcycle operation by impairing your vision (Search), judgment/decision-making ability (Evaluate), and coordination/reaction time (Execute).

**Recommendation: Plan Ahead**

- Riders should never mix alcohol with riding. Even low, legal limits of BAC increase your risk while riding a motorcycle.
- Riders who are away from home and decide to drink should either (1) wait until their BAC has returned to zero before riding, even if it means staying overnight, or (2) leave the motorcycle in a secure location and find alternate transportation home.

\*BAC = Blood Alcohol Concentration

[www.msf-usa.org](http://www.msf-usa.org) 9/06

## CHAPTER 7

### LOUD PIPES SAVE LIVES – THE DEBATE

*I'm not out to [tick] anyone off, but I've been a rider all my life and I think that anything that makes us more visible is good. (TK)*

Few topics are as hotly debated in motorcycle circles today as the loud pipe controversy. While several “studies” have been conducted, few have been conclusive. The results of most have been anecdotal and statistically inconclusive. So what you find – in both the biker community and the population at large – are die-hard believers, die-hard disbelievers, and the rest of the biking world who are still looking for some definitive conclusion.

No amount of inconclusive statistics will change the mind of a die-hard believer. They simply *know* that loud pipes are safer. They know someone – or know someone who knows someone – whose life was saved by loud pipes. Or someone whose life was lost because some driver “just didn’t hear them.” These first- and second-degree separations are proof enough – especially when the disbelievers can’t provide any hard evidence to the contrary.

Sadly, no number of personal stories can change the mind of a die-hard non-believer. Little verifiable evidence exists that loud pipes saved a life, or that lack of them cost one. Non-believers claim coincidence and hearsay. Because, they claim, no conclusive proof can show that loud pipes do anything but annoy others, they remain staunchly in their own camp.

Where does that leave us? Mostly with personal choice. You must choose what to believe and where you stand. Want to catch up on the debate? Simply type “loud pipes save lives” into the search engine of your choice and start reading. You will find studies, reports, and blogs covering the range of opinions.

Take, for example, this story from the Oakland, California Police Department motorcycle unit. A few years ago, Oaklanders began to complain about the noise level of the department’s Harleys. Despite fears voiced by the affected officers, sound ordinances were passed, standards set, and the pipes on all department bikes replaced with quieter versions. Oakland officers felt vulnerable, but reluctantly continued to follow orders. Shortly thereafter, an officer was struck while he was riding his motorcycle. The motorist claimed he simply never heard the bike and therefore didn’t know it was there. In response to officers’ concerns, Oakland conducted a study on the sound issue. Unfortunately, the findings were inconclusive. The officers, however, took matters into their own hands. With a better-safe-than-sorry attitude, these men and women have put their belief into action and have gone back to louder pipes. "There's an old motorcycle adage,” said Deputy Chief Dave Kozicki, “that you are heard before you are seen.”<sup>10,11</sup>

I happen to be a believer – within reason. Deputy Chief Kozicki’s claim is not just an old adage. Most bikers have an intuitive – and eventually experiential – knowledge that louder pipes create awareness. And awareness can save your life. Think of the semi trucks you see on the highway. Most of them have signs to the effect of “If you can’t see me in the mirror, I can’t see you.” The same holds true for cars and

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<sup>10</sup> Phillip Matier, Andrew Ross. “Oakland PD’s Harleys Have a New Roar”. San Francisco Chronicle. 9 March 2008 <[www.sfgate.com](http://www.sfgate.com)>

<sup>11</sup> Bandit, Amanda, Black Market John and Sin Wu, “Bikernet Independent Noise Study”. Bikernet.com <<http://www.bikernet.com/news>>

motorcycles. When you can make eye contact with a driver, you know he has seen you. Often, with today's multitude of distractions – radios, cell phones, in-car DVD players – the only way to get a motorist's attention is by making him hear you.

I will grant that some loud pipe proponents seem to go overboard and ascribe to the philosophy that “louder is better,” period. My view is a bit more complex than that. Super-muffled pipes are dangerous. We are vulnerable enough on the road as is. Now we are silent as well as invisible. Motorcycles provide the least amount of protection of any motorized vehicle; and while they have a certain level of agility, their safe stopping ratio is far shorter than a car's. We need to make sure other motorists can hear us in order to make sure they can *see* us. If we go too far, however, we defeat our own purpose. Neighbors petition city hall for sound ordinances and our attempts at increasing our safety are truncated by those whose ears have been abused by the bikers who are extreme soundies. We must be smart and reasonable about this. Loud pipes do save lives, but they are not the only things that do. We must find a balance between making our motorcycles loud enough to be heard by other drivers and the annoyance and pain caused by overly loud bikes.<sup>12</sup>

To my delight, I recently found a sound study conducted and published three years ago by Bikernet.com. Bikernet.com is the world's largest website in the custom motorcycle industry. Since custom bikes are taking most of the “sound” heat, they decided it was time to do some research and collect hard data. The Bikernet Independent

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<sup>12</sup> If you'd like to read more about my views, visit my blog at [www.loudpipessavelives.com](http://www.loudpipessavelives.com).

Noise Study findings are presented by Bikernet.com writers Bandit, Amanda, Black Market John, and Sin Wu on the Bikernet.com website.<sup>13</sup>

Bandit et al. discovered that “between 70 and 85 percent of all motorcycle/motor vehicle accidents are caused by motorists.” Further, “Recent statistics indicate over 80 percent of all motor vehicle accidents occur while the driver is distracted by cell phones, eating or other interruptions.” More than ever, motorcyclists need to not only increase their own awareness, but also find a way to gain the attention of other motorists.

How, then, are we to be noticed? Emergency vehicles have sirens and blaring horns that are critical in getting the attention of motorists who are too distracted or road-weary to see them coming, even with flashing lights. Some in the biking community are calling for headlight modification as the answer to being noticed, but what differentiates us from other headlights? I cannot count the number of times a headlighted car has crept into my blind spot when I wasn't looking. If I creep over the line while adjusting my radio or make a quick lane change, that car can swerve to avoid me with relative safety. For a motorcyclist, such a swerve at high speeds can be deadly.

Bandit et al. tested four bikes with a typical range of exhaust options. When tested at federal standards, all motorcycles fell within decibel ranges currently accepted for other vehicles. At the speed and distance mandated by federal standards (35-45 mph and 10'-50'), the study measured the levels of cars and trucks passing their test site. They found that passenger vehicles fell into the 78-83 db range and trucks into the 90-92 db range. In comparison, the bikes registered in the same range at an average of 82-92 db – not the excessive noise pollution that is being touted.

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<sup>13</sup> For a full explanation of the study and the equations used, please see <<http://www.bikernet.com/news/PageViewer.asp?PageID=902>>.

What is the best range, then, for motorcycles? Do those few decibels really make a difference? They do. The problem is that there is much less of a motorcycle to see. Passenger vehicles and trucks take up much more road space, giving other drivers a longer chance to see them coming. Because motorcycles are so compact, they must often be heard in order to be seen. The Bikernet.com study tested their four bikes in three scenarios: passing another vehicle (from both sides of the car), oncoming intersection (could the motorcycle be heard across an intersection), and cross-traffic (could the motorcycle be heard approaching an intersection at a right angle to the car).

The only scenario in which the stock bike (82 db by federal standards) could be heard by the motorist was when it was right next to the car; and if the radio was playing, the bike could barely be heard at all.

When passing, the bikes coming in at 86 and 87 dbs could only be heard at one car length back if the radio was playing. If the radio was off, the bikes could be heard almost two car lengths back, which is still not much time or space to maneuver if a car makes an abrupt speed or lane change. In the intersection scenarios, they could only be heard with consistency when approaching at a right angle to the car.

In all scenarios, the loudest bike – still coming in at only 92 dbs, according to federal standards, was by far the most noticeable. When passing, it could be heard as much as five car lengths back with the radio on and almost seven with it off. It could be heard approaching an intersection head-on. At a right angle it could be heard almost a block away, giving both motorist and motorcyclist time for any defensive measures needed.

To loud pipe or to not loud pipe? While studies like the one above continue to add to the strength of anecdotal evidence, the question remains definitively unanswered. You must choose for yourself. I fall in line with Bandit et al., who say, “We believe that motorcycles need to make some noise, but it must be handled responsibly.” I, and many others like me, believe that we need as many safeguards as possible out there on the road. Perhaps if they can hear us, they will begin to see us.

## CHAPTER 8

### ACCIDENT LEGISLATION

When I talk about accident legislation here, I am referring to a grass-roots movement to instigate legislated penalties for perpetrators of vehicular injury or homicide. The American Motorcyclist Association (AMA) is at the forefront of this movement with its Justice For All campaign. Justice For All “focuses on inadequate sentencing of drivers who seriously injure or kill others on the road.”<sup>14</sup> Every day, drivers walk away virtually unscathed – and with barely a slap to the wrist – from the destruction and devastation they have caused. Since the courts don’t appear to be rectifying the situation on their own, Justice For All is lobbying for minimum and standard fines and sentencing.

What is adequate? How can we be both fair and just? That is a difficult question to answer; but the campaign is striving to answer it and to define reasonable penalties for those who cause accidents, especially those who do so through negligence. But what’s reasonable?

We know what’s not reasonable: The \$70 fine imposed on an Iowa driver for crossing the center line of a highway and killing three motorcyclists. The sentence handed down to an Oklahoma woman, putting her on probation for 30 months and ordering her to perform unspecified “acts of kindness and generosity” after she pleaded guilty to negligent homicide for killing a motorcyclist who was slowing to make a right turn. The 10-day suspended sentence and three-month driver’s-license suspension for an Ohio driver convicted of vehicular homicide after backing

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<sup>14</sup> [www.amadirectlink.com/justice](http://www.amadirectlink.com/justice)

out of a driveway into the path of an oncoming motorcyclist, who was killed.<sup>15</sup>

The AMA would love for you to weigh in and participate in their program. They hope not only to initiate more appropriate penalties, but also to make sure motorcycle awareness instruction is part of every driver's education course.

It is important to note that the Justice campaign is not just out to get automobile drivers who harm motorcyclists. Justice For All is working for the rights of all victims. Penalties will also be levied against motorcyclists who run down bicyclists or pedestrians.

My own state – Massachusetts – is one of four states that have gotten some of Justice's campaign elements written into law. As a lawyer, I have worked tirelessly for decades to defend motorcycle accident injury victims and fight for appropriate sentencing and penalties. In upcoming chapters I will share with you tips and guidelines gleaned from over thirty years working for and with accident victims. These tips and guidelines will help you achieve justice.

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<sup>15</sup> AMA – Justice For All

## CHAPTER 9

### TAKING RESPONSIBILITY

Before we move on to other matters, I want to mention one more thing: Our need to be aware of ourselves. Whenever there is a collision or near-collision, most bikers – sometimes me included – are very quick to blame the Other Guy. *Of Course* it was the fault of the dangerous driver who is inconsiderate of or oblivious to we Knights of the Road. I put to you, however, that our responsibility to awareness extends beyond any “other” that might be on the road. It extends to us. It must. We must be aware of ourselves as well. I interviewed a biker from the Midwest who shared this thought:

I do have one theory to share. An accident that I hear a lot about is, the car from the side street “just pulled right out in front of me” the biker says, if he’s able to talk afterward. I think this happens for two reasons:

1. On a lot of bikes, it’s easy to go 60-70 in a 30 without even realizing how fast you are going. The car driver may have looked both ways before he pulled out, but you weren’t there yet on the first look, and then were already on top of him by the time he made his move.
2. Motorcycle turn signals don’t automatically cancel like turn signals on a car. Some novice bikers may be riding with their turn signals on without noticing, and then a car pulls into their path because they think the bike is going to turn off. (FK)

I know it’s easy to blame that other guy – or the highway department or the weather department or the farmer with the broken-down fence. I know that experience shows that we are often simply invisible on the road. But perhaps we are more – and more often – responsible than we have cared to admit or even look at.

## CHAPTER 10

### INSURANCE COVERAGE

Until all states pass legislation to more fully protect motorcyclists who are hit by negligent drivers,<sup>16</sup> we must pay extra care to provide ourselves with the best insurance coverage possible. We as motorcycle riders are far more vulnerable to debilitating injury than many automobile drivers. We must, therefore, protect ourselves from the expenses incurred and potential loss of income brought about by being in an accident.

Uninsured<sup>17</sup> and Under-Insured Motorist<sup>18</sup> – “U” coverage – are the most important you, as a motorcyclist, can buy. Medical coverage is limited for motorcyclists, and PIP (Personal Injury Protection) benefits in Massachusetts do not apply at all to motorcycle operators and their passengers. “U” coverage protects you and your family from negligent drivers who do not carry sufficient insurance to pay for your medical bills, lost wages, pain and suffering, and disability. You should buy as much medical and “U” coverage as you can afford.

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<sup>16</sup> See chapter 8.

<sup>17</sup> **Uninsured Motorist (UM).** If an uninsured driver injures you or your passenger, this coverage will pay your claims for physical injuries. It serves as a substitute for the bodily injury liability insurance that the other driver did not have. This coverage is limited to the amount of insurance you buy.

<sup>18</sup> **Under-Insured Motorist (UIM).** Sometimes when a driver injures you or your passenger, his or her liability insurance is insufficient to cover the full value of your physical injury claims. This coverage will make up the difference. Again, your company’s obligation is limited to the amount of coverage you purchase.

Let me share with you two stories that make this point excruciatingly clear. In 2009, my firm represented two injured motorcyclists whose cases had very different outcomes.

Annette<sup>19</sup> left work on her motorcycle after nightfall. Unbeknownst to her, a bit up the highway, a pair of drunken men were pulled over in their Corvette. As soon as the police officer stepped out of his car the men sped away, assuming they could evade the officer with that head start. The Corvette hit Annette head on at 100-110 miles per hour. Annette survived, but suffered extensive injuries. The owner of the Corvette held only \$100,000 in coverage. Annette's medical bills reached over \$650,000. Fortunately, Annette still lived at home, and her father held high "U" limits – four policies, each with a \$500,000 umbrella. His coverage totaled \$4.5 million, and Annette was awarded just under \$3 million.

Matt, on the other hand, was not so lucky. He was in his mid-forties when a woman ran a stop sign and plowed into his motorcycle. Matt ended up with multiple fractures, three weeks of rehabilitation, and tens of thousands of dollars in medical bills. The driver only had \$20,000 in coverage, while Matt had a mere \$25,000. In all, he had only \$25,000 available (\$20,000 from her and \$5,000 from his own policy) to cover his lost bike, lost wages, and medical bills.

It bears repeating: Please do yourself a favor and buy as much "U" coverage as you can afford.

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<sup>19</sup> All names changed.

## CHAPTER 11

### WHAT TO DO AFTER AN ACCIDENT

When you are in a motorcycle accident, your first questions are likely to be survival-centered. Am I hurt? Is anyone else hurt? Where is my bike? Are we in further danger? The last thing your mind focuses on is figuring out what to do next. And when it does, you are bound to feel overwhelmed and confused. I have created a list of seven crucial steps I have seen accident victims miss or mess up time after time. An oversight in any of these areas can be fatal to your motorcycle injury claim. I believe that by making you aware of these steps and explaining how to successfully implement them, I can arm you for any impending insurance battle. These actions can make a big difference in the outcome of your accidental injury claim.

Each of these steps contains a myriad of mini-steps. Please refer to [7 Mistakes](#) for a full discussion of each of these steps.

- **Document everything at the accident scene.**
- **Document everything that happens in the weeks and months following the accident.**
- **Cooperate fully with and regularly visit your doctor(s).**
- **Get legal advice before you give statements, sign papers, or accept insurance company estimates.**
- **Hire a lawyer (but make sure it is the right lawyer).**
- **Be honest and cooperate fully with your lawyer.**
- **Be honest with the insurance companies.**

## CHAPTER 12

### INSURANCE COMPANIES & ADJUSTORS

After an accident, while you are receiving treatment for your injuries, the party at fault will presumably notify his or her insurance company. Adjusters and investigators recognize the importance of immediately investigating and processing accident sites. They are, however, under no legal obligation to inform you of your legal rights. Every insurance company employs experienced defense attorneys who operate behind the scenes and whose sole responsibility is to protect the financial interests of their client. Insurance companies are in business to make money, and the less they pay out on claims, the greater their profit margins.

Insurance adjusters are trained to take advantage of the fact that most claimants have little knowledge or experience in determining the fair value of their claim. The defendant's adjuster may be pleasant, appear concerned, and even try to be your friend. He may be a wonderful person, coach the local soccer team, and belong to your own church or civic group. Always remember though that his job is to protect the insurance company. He will be doing his best to find a reason to not pay you or, if the insurance company must pay, to minimize the payment and "make the matter go away."

An adjuster uses many tactics to make your matter go away. He may try to get you to minimize the nature and extent of the pain or impact of any injury, going so far as to cause you to doubt your own experience. He may push you to accept full or partial responsibility for the accident when it was in no way your fault. Most commonly, he will work to wear you down and convince you that it will be difficult for you to win your case

in court, regardless of your actual chances. These are all insurance adjustor tricks that an attorney can help you avoid.

The *American Bar Association Journal* recently published an article about a large insurance company that has started a new training program for its claims adjustors. The adjustors are encouraged to do “whatever they can” to get to accident victims before they hire lawyers. This includes monitoring police radios and visiting accident scenes.

Don’t let anyone push, force, threaten, or intimidate you into signing any document, making any decision, or eschewing legal advice. These are common tactics used by insurance companies. If you give in to them, you will most likely regret your decision later. In accident cases haste doesn’t make waste, it creates loss.

<p>CHAPTER 13</p> <p>NEGOTIATING WITH INSURANCE COMPANIES</p>
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If you choose to handle your claim yourself, you will have to negotiate with the insurance company(s) involved. I'd like to share some tips on how to best do that. What you need to know about negotiation can be broken down into three main categories: Arithmetic, Attitude, and Appropriate Delay. By doing the math, maintaining a good attitude, and knowing when to wait, you greatly increase your chances of a successful negotiation.<sup>20</sup>

***Arithmetic***

- **Let the adjuster make the first offer.**
  - Always ask for more than you expect to get.
  - Keep your concessions small.

***Attitude***

- **Be patient and always keep your composure.**

***Appropriate Delay***

- **Ask as many questions as possible; take notes on all the answers you get.**
  - Never show too much interest in any offer made by the adjuster.
  - If necessary, resort to a higher authority.

Whether we like it or not, claim negotiation is a game. It is a game that requires patience, composure, and strategy. If you feel you cannot maintain these things alone, please seek help, either from someone with lay experience or from an attorney. If you find yourself in this position, please call us for a free consultation. We really can help.

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<sup>20</sup> These concepts are discussed in detail in [7 Mistakes](#).

## CHAPTER 14

### COMMON MYTHS ABOUT ACCIDENT INJURY CASES

Many people avoid hiring an attorney or settle their claim for far less than it is worth. They do this because of several common myths about accident injury cases, both negative and positive.

- **If you write the insurance company a letter and you are reasonable, you will get a fair settlement proposal.** Remember that insurance is a business and that its goal, like other businesses', is to make a profit. Insurance companies train adjusters and hire lawyers to ensure you are paid as little as possible.

- **When you are in an accident and the insurance company calls you to ask for a recorded statement, you have to oblige or they won't settle with you.**

Unless you are under oath in a legally sanctioned interview, you are not required to provide a recorded statement. Do not make any formal statement to any insurance company agent until you obtain legal advice.

- **The insurance company for the person who hit you is obligated to pay your medical bills.** The defendant's insurance company is only obligated to pay your bills if A) they fall under the guidelines of a policy, or B) they are ordered to do so by a court of law.

- **If there has been an accident and it wasn't your fault, there must be some insurance company that will pay for your medical bills, lost wages, and injuries.** Not all drivers carry insurance. If you do not have the right coverage for your injuries and the negligent party is uninsured or under-insured, no one is automatically obligated to pay your expenses.
- **Juries are generous.** Due to the propaganda campaign waged by insurance companies, few juries are naturally generous to accident injury victims. You may further find that juries often hold motorcyclists responsible for their own injuries. After all, you knew the risks when you got on your bike.

Please don't let these myths dissuade or deter you from seeking legal advice. Accidental injury claims can be complicated and confusing – even more so when a motorcycle is involved – and the insurance company is not “on your side.” Except in the simplest of cases, you can only benefit from partnership with an experienced attorney who will work diligently to make sure you receive the compensation you deserve.

## CHAPTER 15

### THE NEED FOR AN ATTORNEY

*A study by the Insurance Research Council found that injured people using lawyers in personal injury claims received more money than those without lawyers. Further, these results were calculated after paying lawyer's fees.*

Aside from the preventative measure of purchasing as much “U” insurance coverage as you can afford (see Chapter 10), hiring a lawyer is one of the most important steps you can take if you are injured in a motorcycle accident. Motorcyclists repeatedly get the raw end of the deal due to poor insurance coverage, questionable precedent, and a lack of protective legislation (see Chapter 8). On top of all this, you still have to deal with insurance companies and adjustors. Since your injuries will tend to be more severe than those of Joe Motorist, these adjustors will work extra hard to get you to settle early and small.

During more than three decades of representing injured victims, many of them motorcyclists like you, I have encountered firsthand the methods insurance companies use to take advantage of innocent people who have been traumatically injured as a result of someone else's carelessness.

I first ran head-on into insurance tactics when I was a young lawyer. I was contacted by a man who had broken his leg in a motorcycle accident. Mark<sup>21</sup> had come to me because he was unable to continue working as a mechanic and was falling behind

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<sup>21</sup> Name changed.

with his bills. During our meeting he told me that while he was hospitalized and heavily medicated, a seemingly friendly adjuster from the negligent driver's insurance company had come to his hospital room. The adjuster, while acting as if he were visiting out of concern for my client's well being, persuaded him to sign a document in exchange for an \$1800 check.

That money was long gone by the time I met Mark. His medical bills and lost pay were in the five figures and he wanted to know if I could help him get more money. Unfortunately, the paper Mark had signed was a full release of all claims against the negligent driver who had caused his injuries. He had no idea. Mark ended up suffering financial losses in the tens of thousands of dollars. He had settled his case for pennies on the dollar. The release he signed – without legal advice – was a binding contract and ended his case.

Insurance companies don't want you to hire a lawyer for your injury claim case because they know odds are they will have to pay you more money. Don't let any insurance adjuster or lawyer push you into proceeding without an attorney if you feel you need one.

Not all insurance companies and adjustors behave as they did in Mark's case. The bottom line, however, is that these professionals are employees of the insurance company and have the company's best interests at heart. The above story is a very real – and unfortunately, common – example of the uneven playing field that exists for injured victims. When you are injured, you face an overwhelming mass of information with which you must make daunting choices. You don't have to face these choices alone.

## CHAPTER 16

### WHAT MY LAW FIRM DOES FOR A YOU<sup>22</sup>

Occasionally, representing yourself in an injury claim is beneficial. I understand that your goal may be to obtain the largest award possible and you may believe you can do that best by avoiding lawyer's fees. Often, however, handling your own case can cost you more than it gains.<sup>23</sup> You may settle before you know the real value of your claim, you may unwittingly underestimate the value of your claim, you may be bullied into accepting an offer that you know is insufficient, or you may even miss a critical piece of evidence that may make or break your case. Sadly, I see cases like Mark's (in the previous chapter) far too often.

Don't sell yourself short by not at least considering the possibility of legal aid. My law firm not only offers free consultation, but we also have a proven track record of winning large awards for motorcycle accident victims who suffer from serious injury. We are a boutique legal shop and therefore must limit the number of cases we take, but let me emphasize that we are always available to motorcyclists. As I have pointed out throughout this book, motorcycle accidents present unique circumstances and challenges that most other drivers don't have to deal with. Many of us at Kiley Law Firm are riders ourselves, and feel a special empathy for those caught up in the turmoil of a motorcycle injury case.

Motorcycle injury cases can be remarkably complex, and insurance adjustors can be and ferociously combative. The lawyers and staff at my firm have decades of

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<sup>22</sup> Please ask your lawyer about any terms with which you are unfamiliar.

<sup>23</sup> See Chapter 10

experience in helping motorcycle injury accident victims collect, process, and evaluate accident information. Beyond practical aid, we also offer complete and wholehearted support. The adjuster's priority is the insurance agency. But here at Kiley Law Firm, you are the priority. We will walk and stand with you through the entire claim process.

Finally, we know motorcycles. We will use our experience both as riders and as accomplished members of motorcycle injury legal teams to build and present the strongest case possible.

Following is a sampling of the services we provide for our motorcycle accident injury clients during a typical case. If you know of something you need that is not on our list, please bring it to our attention.

- We meet with and interview you at no charge.
- We give you overviews of personal injury claims and the litigation process, especially how they relate to motorcycle claims.
- We fully explain all fees and costs before we begin working on your case.
- We assemble written records and documents to support your claim, including police reports, medical records, and employment records.
- We investigate your claim, studying witness statements, photographs, videos, diagrams, and physical evidence.
- We review your insurance policy for available coverage to pay for medical, hospital, and wage loss benefits.
- If your case goes to court, we prepare and draft the summons and complaint for filing your lawsuit.
- We locate the defendant so that personal service of summons and complaint can be achieved.
- We prepare and draft interrogatories and requests for production of documents.
- We help you prepare for your deposition.

- We review your file to prepare for and conduct the deposition of the defendant and other lay witnesses.
- We review medical records and reports prior to meeting with your physicians to prepare for any deposition requested by the defense attorney.
- We conduct the deposition of the defendant's experts.
- We meet with you to prepare for your medical examination by the defendant's medical experts.
- We review and analyze your medical records and billings.
- We consult with and retain experts to support or prove your claim, including physicians, economists, engineers, vocational experts, motorcycle experts, etc.
- We obtain and review reports from these experts to support your claim.
- We meet and confer with your medical doctors and other healthcare providers to fully understand your injuries.
- We research and analyze any relevant legal issue that may affect your case, such as assumption of risk, comparative fault, etc.
- We review your health insurance or governmental benefit plan to ascertain whether any money you spent must be repaid.
- We address any liens asserted against your award recovery. (Various healthcare providers, insurers, and governmental agencies may file liens seeking to be repaid for benefits already paid to you or on your behalf.)
- We maintain regular contact with the insurance companies about your claim and conduct periodic discussions with the carrier about your case.
- We negotiate with the insurance adjuster in an effort to settle the claim, either short of litigation or short of trial.
- We file pre-trial memorandum in court as required by the judge, including witness lists, trial readiness, award conferences, etc.
- We meet with you and other witnesses in preparation for trial.
- We prepare exhibits for trial, such as photographs, videos, models, and other demonstrative evidence.

- We prepare for mediation and/or arbitration by organizing records and other documents for submission to the mediator or arbitrator.
- We attend trial and present your case, for as long as it takes, before a judge or jury.
- We analyze the verdict and research any issues that occur at trial.
- We bring all of our personal and professional experience with motorcycles and motorcycle-related cases to the table.

Let us help you pick and parse the information and evidence that will best serve your motorcycle accident case. Let us help you understand the steps you will need to follow to win your case. Let us lead you through the claim process, helping you obtain the justice and compensation you deserve.

## CHAPTER 17

### CASES WE DO NOT ACCEPT

Although we would love to help everyone who has been in an accident, I am afraid that is not possible – and unfair to our other clients. Due to the high volume of calls we receive from accident victims and referrals from other attorneys, my law firm has had to limit the types of accident cases we will accept. This is the only way we can continue to provide high-quality service and personal attention to our clients.

For these reasons, my law firm will generally\* not accept the following types of cases<sup>24</sup>:

- Cases with less than \$3,000 in *expected* medical bills.
- Cases where the claimant was found to be at fault by the police.
- Cases where the claimant was found to be mostly at fault by the police.
- Cases where the claimant had a serious or long-standing pre-existing injury or condition involving the same body part injured in the accident.
- Cases where the claimant has had several prior accidents or claims.
- Cases where the statute of limitations will expire soon.
- Cases where the claimant has a significant criminal record involving fraud, deceit, or dishonesty.

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<sup>24</sup> These points are more fully explained in 7 Mistakes.

\* Please keep in mind that these cases are *generally* not accepted. The boutique nature of our law firm requires that we set general limits on the cases we take. As I mentioned in the last chapter, however, we have a special empathy for the victims of motorcycle accidents. Please do not hesitate to call us if you have been injured while riding your motorcycle, regardless of the circumstances.

## ABOUT MY PRACTICE

When grappling with a catastrophic injury case – which many motorcycle injury cases sadly are – I believe it is important that no one ever forget what really matters. The most important consideration is the mind-numbing reality that someone has suffered paralysis, brain damage, or some other kind of crippling injury. Those victims have been subjected to unfathomable pain, grief, and financial hardship. They are asking difficult questions:

- What do I do now?
- How do I pay my medical bills?
- How do I feed my family?
- How do I get my life back?

When I work with those who have been victims of wrongdoing – no matter the cause – I try to always remember the big picture: the people I am working to help – my clients, their struggles and needs, their personal stories, and how much life really changes – how difficult life can become when someone is visited by tragedy. This sense of awareness, of remembering what is important, is the foundation of my law practice. I have tried to imbue my entire firm with these priorities. All of the lawyers here are committed to these ideals.

I have been representing injured victims since 1976. A number of years ago my firm decided to become more selective about the cases our firm takes on. Accordingly, we have evolved into a boutique law firm and do not handle a high volume of cases. This

allows us to dedicate our energies, talent, and resources to obtain the best possible results for our clients.

My firm places an emphasis on injury accident cases, representing clients seriously injured in automobile, truck, and motorcycle accidents. Within this arena, we specialize in motorcycle cases, bringing to bear our experience as lawyers and – for many of us – as bikers. We further specialize in child injury cases, including birth injuries like cerebral and Erb’s palsy; head and spinal cord injuries; abuse in day care and foster care; and traumatic injury or death from defective toys, child safety seats, and motor vehicle accidents. Most of our cases are referred to us by satisfied clients and other attorneys.

We at Kiley Law Firm have a proven track record in injury claim success. Please visit us on our website at [www.TomKileyLaw.com](http://www.TomKileyLaw.com). We update our site regularly and it is the most popular lawyer website in the Northeast.

## *ABOUT THE AUTHOR*

Massachusetts lawyer Thomas M. Kiley is a lifetime motorcycle rider and enthusiast and has represented individuals against insurance companies for over thirty years. The *Boston Herald Sunday Magazine*, in its *Personal Best* series, referred to Mr. Kiley as the “Million Dollar Man.” This was based on his record of obtaining million dollar verdicts and awards in complex cases in which he represented injured victims against insurance companies.

Since 1976, Mr. Kiley has practiced exclusively as a plaintiff’s trial lawyer and has collected seven figure wins for clients with brain injuries, paralysis, and a myriad of other injuries. He was a member of the plaintiff’s trial team in the Woburn case, which involved an epic legal battle waged by eight families from a neighborhood in Woburn, Massachusetts. Each family had a child with leukemia, which was linked to the municipal water supply. The case became the subject of the best-selling book *A Civil Action* by Jonathan Harr and went on to become a feature film.

Mr. Kiley is a respected member of numerous professional organizations, including the American Association for Justice, the Massachusetts Academy of Trial Attorneys, and the Massachusetts Bar Association. He has achieved the highest possible rating (AV) for both legal ethics and ability by Martindale-Hubbell, the definitive guide to America’s leading lawyers and law firms, as well as being awarded a 10 out of 10 by Avvo, a website that profiles and rates attorneys. In 2009 and 2010, Mr. Kiley was listed in *New England Super Lawyers*.

For a sampling of verdicts and awards achieved by Mr. Kiley or to learn more about him and his firm, please visit [www.TomKileyLaw.com](http://www.TomKileyLaw.com).

## *TOM KILEY'S OTHER BOOKS:*

### ***AUTOMOBILE ACCIDENTS***

Chances are, unfortunately, that you will be involved in an automobile accident at some point in your life. If not you, it will definitely happen to someone you know. In *The 7 Biggest Mistakes That Can Wreck Your Massachusetts Accident Case*, Tom Kiley will walk you step-by-step through the accident injury process. He shares with you your best courses of action from the moment your accident occurs through the extent of medical treatment. One of his out-of-state reviewers found the book so helpful, she said, "I would buy this book even though I'm not from Massachusetts. I found it invaluable – I wish I'd had it when I had my car crash!"

### ***CHILDREN AND ACCIDENTS***

If there are children in your life – whether you are a parent, caretaker, teacher, or friend – take a look at his book *Dealing With a Nightmare: Essential Steps to Take if Your Child Suffers a Serious Injury*. Tom Kiley has drawn on his own experience from decades of representing families of injured children and added to it information gleaned from research, interviews, and news stories. These past experiences and new information have come together to create a compassionate guidebook for both parents who are looking for information about child dangers and safety and parents who are overwhelmed and bewildered by the injury of their child. *Dealing With a Nightmare* covers a variety of topics related to children and injury, including the steps you need to take to make a strong injury claim case, how to deal with big insurance companies, how to best protect your child from injury, and how to find and get support when injury is beyond your control. Peace is priceless and knowledge is power. Kiley hopes his book brings peace and knowledge to parents trying to guide little people through a very big world.