

SCOTT M. MCPHERSON



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September 17, 2007

Attention: [REDACTED]
[REDACTED]
[REDACTED]

VIA FACSIMILE: [REDACTED]
& REGULAR MAIL

RE: My client: [REDACTED]
Your Insured: [REDACTED]
Claim No.: [REDACTED]
Date of Loss: December 16, 2006

Dear Ms. [REDACTED]

Thank you for contacting my office this morning to relay a counteroffer of \$55,000.00. I will be sure to inform my clients of this offer no later than tomorrow, but wanted to pass along a few general thoughts about the liability issues we have been discussing.

Donna, my assistant, passed along that during your conversation today you re-asserted the position that [REDACTED] was 50% at fault. In reviewing my letter of last week, I went into some detail about why I feel strongly that the entire blame for the accident is with your insured, and I would refer you back to those comments. However, I now want to point out some things that while not "evidentiary" as to this specific case, warrant consideration on your part as you consider the issue of fault.

Please be advised that for me, this is not just another injury claim. While I am very aggressive on behalf of all my clients, this is especially true when representing someone hurt while riding a motorcycle. I am the proud owner of a Harley Davidson Heritage Softail Classic motorcycle, and consider myself a "full time rider" (unlike many Attorneys and other professionals who own bikes for the purpose of weekend "joy rides"). My Harley brings me back and forth to work, to depositions, to weekly Rotary meetings, and anywhere else I may need to go. In fact, unless the weather is bad or I need to wear a full business suit for Court, I am on my bike. I would also point out to you that I have taken and completed one of the best rider education programs available: The Rider's Edge Course of Harley Davidson. Therefore, I have both a good formal education of proper riding procedures, as well as the many miles I have logged riding my bike.

What you must understand as you evaluate this case is that riding a motorcycle, especially in the massive urban area that has become the Tampa Bay area of Florida, is all about risk management. We all know that riding is more dangerous than taking a car, but that does not mean that those risks cannot be managed and partially controlled. For

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example, the following are just a few of the things that a rider can control:

1. Wearing an appropriate helmet, even when the law would permit you to ride with no head protection;
2. Proceeding at a safe speed, and never exceeding the posted limit; and
3. No alcohol or drugs before riding.

A person riding a motorcycle must also survey the road ahead to anticipate any hazards that might cause a problem. Included in this is the need to think about what I call "outs," but what is really a contingency plan of sorts in case there is a problem. One of the most common things you might plan for when riding is the classic "left-turner," which is what we have in this case.

Now, applying all of these things back to the evidence spelled out in my letter of last week, I would restate that there is simply no basis to hang any of the fault on Mr. [REDACTED]. You mentioned to Donna that [REDACTED] is not afraid to try this case, and to that I would reply that neither am I or my client! Although I have a statement from the witness, Mr. [REDACTED] that I consider to be very favorable, regardless of what he told [REDACTED] there is no legal basis to apportion any fault whatsoever to Mr. [REDACTED].

Mr. [REDACTED] was managing his risks. He was surveying the situation ahead (we know this to be true because he reacted to the hazard), and he responded in a manner consistent with the hazards that were unfolding before him. Keep in mind: When you are on a bike, you literally have a fraction of a second to take action, and whatever action you choose might be the difference between living and dying! Mr. [REDACTED] chose to take an action that he thought would give him the best odds of survival. Again, please tell me who can fault him for that?

You evidently argue that Mr. [REDACTED] over-reacted because your insured stopped and did not continue with his left turn; however, you ignore that he stopped in my client's lawfully occupied lane of traffic. Please explain to me exactly how Mr. [REDACTED] was supposed to know that your insured was going to stop. Or better yet, explain to me how your defense attorney is going to argue this in Court with a straight face! Again, we are talking about a fraction of a single second that my client has to identify the risk to his life that is unfolding, and take immediate action.

When all is said and done, the bottom line is this:

1. My client was managing all the risks within his control (e.g., safe speed, wearing a helmet, not impaired, etc.);
2. My client had the right of way (there is NO disputing this); and

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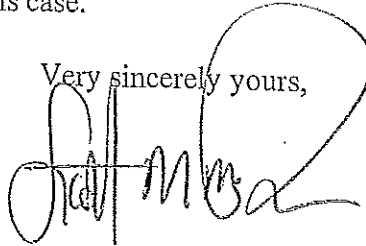
3. Your insured pulled out right in front of my client, thus violating a legal duty to keep a proper lookout and yield to oncoming traffic.

That, in a nutshell, is the reality and there is no getting away from the evidence.

I am going to talk to my client, but I would repeat my request that you reconsider your position on liability without further delay. If there is someone there at [REDACTED] with riding experience, then perhaps he or she might provide input.

In conclusion, I appreciate your consideration of these comments, and welcome the opportunity to further discuss this claim with you. I do agree that we need to get past these liability issues in order to resolve this case.

Very sincerely yours,

A handwritten signature in black ink, appearing to read "Scott M. McPherson", written in a cursive style.

Scott M. McPherson

SMM/dmb

M.A.C.