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MOTORCYCLE LAW

I. Presenters

A. Robert Ramsey, Esquire, Garden State CLE Senior Instructor

B. Joel R. Rosenberg, Esquire, Certified Civil Trial Attorney

1. Stark & Stark, 17 years

2. Avid motorcycle rider.

II. Personal Injury Protection (PIP)

A. No PIP coverage allowed for a motorcycle liability insurance policy.

B. Auto PIP- Minimum PIP for a standard liability policy used to be \$250,000. Now the minimum is \$15,000 and the maximum is \$250,000.

C. First Party Medical Benefits- Some carriers offer very limited amounts of first party medical benefits for motorcycle policies. The maximum amount is \$5,000, which is really nothing.

D. Motorcycle policies may include PIP coverage for pedestrian injuries, but pedestrian injuries in motorcycle accidents are extremely rare.

E. Since PIP is not an option, what about other liability coverage?

1. Liability and Underinsured Motorist Policy.

2. Buy as much as the carrier will sell you.

F. Private health insurance- Most private health insurance policies will cover catastrophic injuries resulting from motorcycle accidents.

G. Life Care- There is no way to protect against life care expenses resulting from catastrophic motorcycle injuries.

III. Insurance Agent v. Attorney- Never rely on the advice of an insurance agent. Always seek the advice of counsel. Agents are no longer liable for bad advice.

IV. Challenges of Fatal Motorcycle Accident Litigation

A. Quick and early investigation is essential. Cases may turn on video or witness observations.

B. Accident reconstruction must take place immediately.

C. Data can be drawn from the motorcycle. For example, the GPS may contain valuable information. Drivers may wish to install video equipment on their motorcycles.

D. Survivor or Wrongful Death Action

1. Survivor actions seek to recover damages for pain and suffering before death.
2. Wrongful death actions seek to recover damages for future financial losses of dependents.

E. Any assumption of risk?

1. People who do not ride motorcycles generally have a preconceived notion that the plaintiff was involved in an ultra-hazardous activity.
2. Neutralize this bias by reminding jurors that the Motor Vehicle Code affords all drivers the same rights and imposes upon them the same responsibilities.

F. Road Defects

1. Tort Claims Act- The Tort Claims Act becomes involved because the government is being sued for a poorly maintained road. These cases are different because the hurdles involved are significant.
2. Notice- Since tort claim notices must be filed within 90 days, serve all entities (state, county, local town, Turnpike Authority, Garden State Parkway, etc.) and sort it out later.

G. What type of juror is the plaintiff looking for? Someone who is an open book, *i.e.*, someone who has no preconceived notions. Unfortunately, jurors are not always candid.

H. There are differences in how a motorcycle injury case is structured compared to a typical auto accident case.

1. Perception of speed based upon sound. Because a motorcycle is louder, witnesses believe that the motorcycle driver is speeding.
2. Significance of speed as it relates to injury is greatly misunderstood.
3. An indispensable aspect of motorcycle accident litigation is accident reconstruction. Jurors expect a certain level of sophistication in the explanation. The jury wants to see a graphic demonstration.

I. Damages in Excess of the Policy Limit

1. An attorney can never counsel a client to go to trial to recover damages in excess of the policy limit with an expectation that he/she is going to recover that money unless the attorney knows that the defendant has significant assets. Underinsured parties, however, rarely have such significant assets.
2. Although a plaintiff may recover damages in excess of the policy limit if the carrier exercises bad faith in attempting to settle a case, the bad faith law in New Jersey is not particularly well-developed for plaintiffs.

J. Accident Reconstruction- If the defense tries to exclude accident reconstruction evidence because it is speculative, the response is the reconstruction is based on science, not speculation.

K. Autopsy

1. Shows proximate cause.

2. Establishes pain and suffering. For example, in a survivor action, the medical examiner may opine that the deceased knew that he/she was so seriously injured that death was imminent.

L. Economist- In wrongful death cases, an economist will establish the financial loss.

M. Verbal Threshold- A verbal threshold will apply in some cases. For example, if there is a verbal threshold on a client's auto policy, it will apply to his/her motorcycle.

V. Advice for Young Attorneys- Sit down and talk to the clients to really understand all aspects of their cases. Listen to the clients. Go to their homes. Get to know them. Talk to family members who know what the clients went through because it is human nature for people to downplay their pain and suffering with the passage of time. People want to forget the bad things in their lives.

V. Contact Information- For questions about this lecture or motorcycle law in general, Mr. Rosenberg may be reached at jrosenberg@stark-stark.com.