



# The Michigan Motorcycle Law Newsletter

**Buckfire & Buckfire, P.C.**

**MICHIGAN'S TOP RATED MOTORCYCLE LAWYERS**

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### Upcoming Motorcycle Events/Rides

- August 9: Heritage Ride. Ypsilanti. Contact: 734-428-8673
- August 16-18: State HOG Rally. Kalamazoo. Contact: 248-372-1659
- August 24-25: Fire and Iron 247 Charity Ride. Clio. Contact: 810-691-9402

## Recent Court of Appeals Case Holds That County Liable To Motorcyclist For Bike Accident Caused By Pothole

In *Utley v. Washtenaw County*, unpublished opinion per curiam of the Court of Appeals decided April 24, 2012 (Docket No. 303572), the Court reinstated an injured motorcyclist's case against the Washtenaw County Road Commission.

In this case, the Plaintiff and five of her friends were riding motorcycles on Zeeb Road in Lodi Township when plaintiff hit a pothole and was thrown to the ground and suffered serious injuries. The pothole was located at the crest of a hill where the road transitions from pavement to gravel.

One of the riders testified that the hole was approximately six-inches deep and approximately two to three-feet wide. The other riders and the responding officer described the hole as "large" and "significant."

Plaintiff filed suit against defendant Road Commission, alleging that the Road Commission was liable under the highway exception to governmental immunity, MCL 691.1402(1). The trial court granted the Road Commission's Motion to Dismiss and the Plaintiff appealed.

The *highway* exception to governmental immunity allows a person to recover damages where a governmental agency having jurisdiction over a highway, fails to "maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel."

The law also requires that the agency either: (1) know of the existence of the defect; or (2) in the exercise of reasonable diligence should have known of the existence of the defect and had a reasonable time to repair it.

The trial court dismissed the case because the Road Commission argued that its employees had repaired the pothole three days before the crash and that an intervening rainfall had caused the pothole to reappear.

The Court of Appeals disagreed and reversed. Although a department worksheet purported to show that a road worker conducted some spot scraping on this gravel road three days prior to the accident, it did not demonstrate that this pothole had been repaired. The worker testified that he did not recall whether he scraped or otherwise repaired the pothole.

Furthermore, the Court found that the mere presence of such large a pothole less than three full days after the road was spotscraped supports a reasonable inference that the pothole was not repaired.

The Court found that the evidence was sufficient to create a *question for the jury* concerning whether the pothole amounted to a defect that a reasonable road commission would have understood "posed an unreasonable threat to safe public travel and would have addressed it."

## Importance of Medical Benefits On Your Bike Policy



*This article was written by Buckfire Attorney Dondi Vesprini (pictured to the left). Dondi has been a licensed attorney in the State of Michigan since 1999. He is recognized as an expert in cases involving motorcycle accidents. Dondi is a member of the Board of Directors of ABATE of Michigan and also frequently meets with both legislators and lobbyists regarding legislation affecting injured motorcyclists. Look for Dondi's article in each issue where he will discuss important issues affecting motorcyclists.*

*If anyone has any suggestions of topics they would like addressed that may be of interest in the motorcycle community, please feel free to email **Dondi at Dondi@buckfirelaw.com***

As most motorcyclists in Michigan know by now, our revised helmet law gives a motorcyclist the choice to ride without a helmet, so long as he/she meets the age, experience and insurance requirements. Most motorcyclists also know that the insurance requirement is that the motorcycle insurance policy must contain at least \$20,000.00 in medical benefits for the operator (and an additional \$20,000.00 to cover a passenger) payable in the event of a motorcycle accident.

All too frequently, I have heard motorcyclists who choose to wear a helmet make comments such as, "I don't need medical benefits on my motorcycle insurance policy since I am not going to ride without a helmet." or "Why would I spend the extra money to get medical benefits on my motorcycle insurance policy? Only people who want to ride without a helmet need that."

While it is true that medical benefits on a motorcycle insurance policy are only "required" if you want to ride without a helmet, any responsible motorcyclist in the State of Michigan interested in his/her own financial security should purchase as much medical benefit coverage on their motorcycle insurance policy that he/she can afford. This is true regardless of whether you plan on wearing a helmet or not.

This is because in Michigan, if you are involved in a motorcycle accident that does not involve a motor vehicle (i.e., car, truck, bus, etc.), nor does it involve a defective roadway where you can sue a negligent road commission or department of transportation for your medical bills based on their failure to keep the road in reasonable repair, then the motorcyclist is on his/her own hook for medical expenses.

This means that if you are riding your bike and hit a deer, a bicycle, a pedestrian, a tree, another motorcycle, or simply lose control and go down due to wet pavement during a rain shower, you will be responsible for paying your own medical expenses resulting from the accident.

In that situation, if you have medical benefits on your motorcycle insurance policy, you can make a claim for these benefits to take care of your medical expenses. Those riders who receive Medicare or Medicaid can also make a claim against these entities for payment, but with the ever restricting rules on payment by governmental entities, it makes sense to have medical benefits on your motorcycle insurance policy as a "back up plan" if Medicare or Medicaid doesn't make the payments.

Most commonly, I hear motorcyclists say that they have health insurance (i.e., Blue Cross, HAP, etc.) so there is no need for them to waste money purchasing medical benefits on his/her motorcycle policy. My advice to those persons is to make absolutely certain that your health insurance will cover medical expenses arising out of a motorcycle accident before they completely dismiss the thought of purchasing medical benefits on their bike policy. You may be surprised to find, as many motorcyclist I have talked to have found out the hard way, that your health insurance has specific exclusions for injuries arising out of a motorcycle accident. Some of these exclusions come under the guise of excluding benefits for injuries arising out of "dangerous activities", and the policy goes on to define motorcycling as one such activity. If you have one of those types of exclusions on your health insurance, you had better have medical benefits on your motorcycle policy or else be ready to open your checkbook to take care of your medical expenses.

The bottom line is that while medical benefits on one's motorcycle insurance policy is only "required" if one wants to ride without a helmet, it is strongly recommended or you risk footing your own tab for your medical expenses arising out of a motorcycle accident.

## Ask Dondi, Dan, and George: Your Motorcycle Legal Experts

**Q: What if I lost my job due to the injuries from the motorcycle accident?**

**Dondi:** If you lost your job due to injuries from the accident, the insurance company is required to pay your wage loss benefits even if you are no longer disabled, as long as you are trying to find new work after your disability has ended.

**Q: Am I entitled to wage loss benefits if I am not employed and looking for a job on the date of the accident?**

**Dan:** You are still entitled to be paid wage loss benefits. You will need to show proof that you were trying to find a job, such as submitting resumes or putting in job applications with potential employers. The amount of your wage loss benefits will be based on income from your previous job before the accident.

**Q: Am I entitled to wage loss benefits if I was being paid in cash for my job on the date of the accident?**

**George:** You are entitled to benefits as long as you have proof that you were working and being paid for your work. In order to prove your income, it will be necessary to file tax returns to show what your income was before the accident.



Attorneys Dondi Vesprini, Dan Buckfire, and George Burke.

Bring this newsletter into Plymouth Cycle and Speed and receive a

**10% Discount off next purchase**

Buckfire & Buckfire helping the Biker Community

### Our Motorcycle Shop Spotlight

Plymouth Cycle and Speed

503 Amelia St., Plymouth, MI 48170

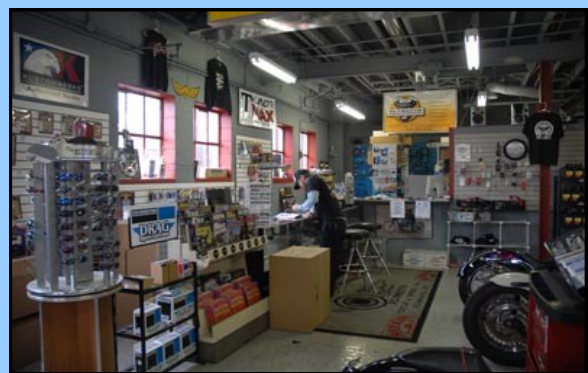
Ph: 734-416-8480 — [www.plymouthcycleandspeed.com](http://www.plymouthcycleandspeed.com)

This month we spotlight Plymouth Cycle and Speed (formerly JR Cycle Works), located in the heart of Plymouth's Old Village since 2004. Plymouth Cycle and Speed is a full service facility specializing in repair, service, and customizing of V-twins. It offers dyno tuning, custom fabrication, engine build packages and hop up kits, custom paint, winter storage, detailing, and all forms of maintenance and service.

Being part of the Old Village Association, Plymouth Cycle and Speed helps in community beautification projects and organizing events locally. It has annual events, such as summer open houses, poker runs, and a Customer Appreciation Holiday party, as well as email newsletters regarding upcoming events.

Their staff is well known throughout the bike community, having years of experience and knowledge of bikes. They also are the Official Install Crew for Baker Drivetrain, traveling to all major rallies to install their transmissions in customer's bikes.

The shop shares its building with a tattoo shop, My Little Needle Tattoos. There since 2009, the shop is run by Trish—a tattooer with a strong background in fine arts and motorcycles. She and her crew are biker friendly and well versed in the arts.



Parts counter at Plymouth Cycle and Speed

MICHIGAN'S TOP MOTORCYCLE ACCIDENT LAWYERS



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Have a friend who would also like to receive "The Michigan Motorcycle Law Newsletter"?

Just call or email Kathryn at 248-569-4646 or [Kathryn@buckfirelaw.com](mailto:Kathryn@buckfirelaw.com) with their contact information and we will add them to our mailing list!

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**Our Current Cases of Interest**

- A wrongful death claim against a negligent driver who failed to see a motorcyclist and took a left hand turn in front of him. The motorcyclist survived the crash but died two days later in the hospital.
- A motorcyclist from Canada was traveling through an intersection in Sandusky, Michigan when he was hit by a motorist from Indiana who failed to properly stop at a stop sign. The motorcyclist suffered a severely fractured right wrist and multiple abrasions and facial lacerations.

**Recent Settlements**

- \$210,000 settlement for a client injured in a car-motorcycle accident. The client was a passenger on a motorcycle that was involved in an accident when the driver of the motor vehicle did not see the motorcycle and pulled out from a side street. Our client sustained a fractured wrist requiring surgery.

**Become a "Guest Blogger" - Share your favorite ride, stop, or talk about your shop!**

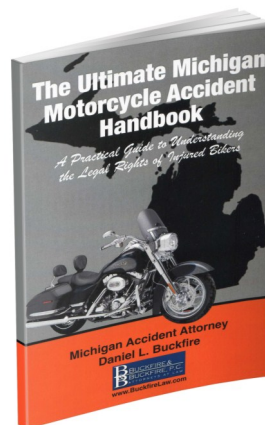
Do you have a favorite bike stop, trip, or story you would like to share? Do you own a motorcycle shop and want to inform the biker community about your shop?

We are inviting you to be "Guest Bloggers." Send the details to [Kathryn@buckfirelaw.com](mailto:Kathryn@buckfirelaw.com) and we will post your story on our Motorcycle Blog at [www.Michiganmotorcycleaccidentlawyerblog.com](http://www.Michiganmotorcycleaccidentlawyerblog.com)

**FREE Motorcycle Accident Book**

Your FREE Guide to Michigan Motorcycle Accident Cases

**Warning: Do Not Speak to the Insurance Adjuster or Hire a Lawyer Until You Read This Free Book.**



**The Book reveals:**

- How To Find The Best Lawyer For Your Case
- Who MUST Pay For Motorcycle Damage Claims
- How To Get The Best Money Settlement For Your Injuries
- Are You Entitled To Michigan No-Fault Insurance Benefits
- How To Get Your Medical Bills And Lost Wages Paid
- **AND MUCH MORE** including the **SECRET STRATEGIES** insurance companies will use to avoid paying YOU a fair settlement.

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[www.MichiganMotorcycleBook.com](http://www.MichiganMotorcycleBook.com)