

# Watch Out For Motorcycles!

## Alcohol or drug defense – Florida law

### Don't Drink & Drive – More Consequences Than You Might Imagine:

*State studies have shown having any alcohol in one's body increases the chance of crashing by five times; and, having a BAC greater than 0.05 percent increases the risk of crashing about 40-fold.<sup>1</sup>*

It's not too difficult to imagine these facts: An experienced rider meets friends at a local watering hole. Time goes by fast, he has "a few beers"; and a few hours later, he saddles up on his motorcycle for the short ride home. A short distance later, just a block or two away, he is involved in a serious motorcycle accident with a car making an improper lane change – where he is airlifted to a trauma hospital for evaluation and treatment of life threatening injuries. At the hospital, they inquired about alcohol consumption, administered tests including a BAC; and, they diagnosed him with multiple fractures, resulting in hospital admission and significant time lost from work.

*In recent years, studies report the "average" hospital charge for a motorcyclist admitted to a Florida hospital for the evaluation and treatment of traffic crash injuries has been reported at approximately \$57,000; and in 2011, 49 percent of such emergency room visits or hospital stays were not covered by insurance.<sup>2</sup> Additionally, from cases scene in our office, most victims air-lifted from the scene have added transport expense on the average of another fifteen thousand dollars or more; and secondly, most hospital bills we have seen far exceed the above reported average; and as a result, it is not uncommon*

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<sup>1</sup> Motorcycle Statistics – Ride Smart Florida.  
<http://www.ridesmartflorida.com/dataandstatistics.htm>

<sup>2</sup> Motorcycle Statistics – Ride Smart Florida  
<http://www.ridesmartflorida.com/dataandstatistics.htm>

*for a bikers medical bills alone to exceed \$100,000.*

The next days - A Sobering Wake Up Call: After being discharged, the biker calls a friend to take him home from the hospital, the biker has many concerns including whether he is likely to be arrested, whether he will lose his job and what he should do about his bike at the tow yard; and, what will he do with the medical bills and lost wages following the above motorcycle accident, especially since he did not have the best insurance.

During the initial consultation with the attorney, the biker learns if the police haven't already knocked on his door, he's not likely to be charged with a DUI by this point. Additionally, if his employer hasn't learned about the BAC results, it is not uncommon to hear an employer say he cannot afford to have someone disabled for a long period of time; and thus, it is not uncommon for employers to terminate those who have been involved in an accident with injuries, especially when they miss considerable time off from work afterwards.

Finally, the issue becomes: Whether the biker can recover his damages for his totaled bike, medical bills, lost wages, and pain and suffering against the other driver who allegedly caused the motorcycle accident?

Section 768.36(2), Florida Statutes provides: In any civil action, a plaintiff may not recover any damages for loss or injury to his person or property if the trier of fact (typically a jury) finds that, at the time the plaintiff was injured, the plaintiff was under any influence of alcoholic beverage or drug to the extent that the plaintiff's normal faculties were impaired or if the plaintiff had a blood alcohol or breath alcohol level of .080 percent or higher; and as a result of the influence of such alcoholic beverage or drugs, the plaintiff was more than 50% at fault for his or her own harm.

Given the above, if the injury claim does not settle before litigation, the biker should expect the defense attorney for the at fault driver to issue a subpoena to the hospital requesting a complete copy of the biker's

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hospital chart. Without a doubt, the attorney or staff will find and highlight the BAC reported findings; and afterwards, the at fault driver (through his defense attorney) will offer lesser negotiations by citing the above Florida law and arguing if the case is tried, there is a chance a jury will find the biker was under the influence and was at least 50% at fault for the accident. If this happens, the biker will not be able to hold the other driver legally liable for his medical bills, lost wages or other damages.

Overall, when most people think of drinking and driving, they first think of the criminal consequences, thinking of the arrest for driving under the influence. As noted above, the consequences to the biker can be far greater and far worse. Additionally, as noted above, not only could such an event result in very serious personal injuries and related damages; but also, evidence of drinking could severely diminish the chances of holding another driver accountable for the damages to your bike, your medical bills, lost wages, and other high losses suffered as a result of an accident; and when you consider this added consequence, the example above is a very a very sober reminder to not drink and drive; and, to please drive responsibly.

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