

## Ask Our Lawyer

by Rod Taylor - A.B.A.T.E. Legal Services

### A Throat Cutting at Hog Rock

**Q:** My husband Bill and I were attending Hog Rock on the Ohio River in Southern Illinois. All was well when we were accosted by an individual who pulled a knife. Even though my husband and others did their best to defuse the situation, the bad guy pulled a knife, grabbed my husband by the back of his neck and put the knife to his throat – truly the most horrific experience of my life. Despite our pleas, my heart sank as this guy cut my husband's throat. Blood spurted and I just knew that my husband was dead. While assisting my husband the bad guy stabbed me in the abdomen. Thankfully, we survived the assault. At that point, Bill's friends grabbed him and wrestled control of the knife. The bad guy was arrested, charged and remains in jail pending bond. I know the prosecutor is in charge with prosecuting this guy for any and all crimes he has committed, but what are our rights and remedies against this guy for the losses he has caused? Besides lost income, we have incurred medical bills, suffered pain and the fright of our lives. Can we sue this guy and recover damages?

– ABATE of Indiana member

**A:** Yes. ABATE will take your case and sue this rascal for your losses. We caution you that the folks that do what he has done to you usually do not have a lot of money. Even if he has insurance, it would not apply because the acts of stabbing are intentional. I predict you folks would get a sizable judgment, but collecting it will be the problem. Guys in jail are hard to garnish. One can only hope that he will hit the lottery or inherit grandpa's farm. With our help, at least you will have a judgment you can frame as a constant reminder that you will be there for him when he gets out of jail. The good news is that since his acts were intentional, he cannot discharge the debt in bankruptcy.

### Roadside Security, or Roadside Bribe?

**Q:** I got a ticket in northern Michigan recently. The cop asked for a cash payment of \$50.00 on the spot. When I informed the officer that I didn't have \$50.00 cash, the cop asked if I had any money at all. I only had a couple of bucks with me, so the cop took my license and told me I would get the license back after the ticket was paid. I think that sounds bogus. Have you heard of this?

**A:** Surprisingly, the law supports the cop. Most states are members of an interstate compact for enforcement of traffic tickets - if you don't appear in court and pay the fine, your home state will be notified and will suspend your license until you deal with the out-of-state ticket. The Driver License Compact (DLC) also provides that the home state would treat the offense as if it had been committed at home, applying home state laws to the out-of-state offense. The action taken would include, but not be limited to, points assessed on a minor offense such as speeding and suspension of license or a major violation such as DWI/DUI. It is not supposed to include non-moving violations like parking tickets, tinted windows, loud exhaust, etc. All states are members except for Georgia, Michigan, Wisconsin, and Tennessee. Nevada repealed the authorizing legislation in 2007, though it still generally conforms to the agreement through regulations.

Michigan is not a member of the interstate compact. Pursuant to MCL 257.749, the officer is empowered to receive from the offender a cash bond to secure the offender's appearance in court to answer for the ticket. If the offender cannot post the bond (in cash, on the roadside) the officer is empowered to retain the offender's license to guarantee appearance. The cash bond cannot exceed \$100.00. Payment of the bond is not an admission of the offense, and you are free to return to the county of the infraction to contest the ticket at the time of the scheduled hearing.

### Bike Theft Coverage – Big Chain, Bad Dog Needed

**Q.** My husband had a bad crash on his motorcycle, but is recovering. The insurance company has agreed to pay us for the damage to his bike and allow us to keep it less the salvage value. We are paying a fair price for wrecked bike (salvage) and can fix it for a reasonable amount. Is that normal for an insurance company to do that? Also, the insurance premium is due soon. Is it ok to cancel the policy? Is there any downside to canceling? We need to save all the dollars we can until my husband recovers from his injuries and gets back to work, but we do not want to jeopardize the settlement funds and the deal for the bike. Rod, we need your advice.

– ABATE of Indiana member

**A.** Most insurance companies allow its insureds to "buy" the salvage, so buying the salvage is normal. This means that when a company totals your motorcycle, they are obligated to pay you the "value" of the motorcycle. At that point, the insurance company owns the wrecked and totaled motorcycle (salvage). You then can negotiate with your insurance company as to the value of the salvage. If you are mechanically inclined, this may be an opportunity to get a "good deal" if the motorcycle is repairable. They will deduct this salvage amount from the value of your motorcycle and send you a check for the balance.

As to your other question, you can cancel your policy and it will not affect your motorcycle settlement or the other obligations of the policy in effect at the time of the crash. The greater portion of the premium you pay on your policy goes toward liability coverage for the other person if you are involved in a crash. Since your bike is not road-worthy, that part of the coverage is a waste. However, your policy does have theft coverage and you will lose that coverage when you cancel. Check with your homeowners/renters insurance company to see if they will provide theft coverage for the bike since it may be considered personal property and not a "vehicle." Some policies provide coverage for a stored bike in damaged condition – some don't. If you do not have theft coverage, get a big chain and a bad dog because the economy has made your kind of bike a prominent theft target.

### **Getting the Fixer Fixed**

**Q:** I have a problem with getting my motorcycle repaired. The mechanic who is supposedly fixing it has had it for many weeks now and is not fixing it even though I have paid him over \$1,000. What can I do?

**A:** Probably the fastest way to address this problem is to file a complaint in your county's small claims court. The court will, after a relatively short period, conduct a trial and will be able to enter an order to get these guys to do what is right. Small claims courts are designed to work without lawyers, and we will be happy to give you some guidance on the process.

### **What is the Law Regarding the Tape Recording of Meetings Open to the Public in Ohio?**

**Q.** What is the law regarding the tape recording of meetings open to the public in Ohio?

– Ed Schetter, Executive Director of ABATE of Ohio

**A:** Ed, Ohio is a single party state meaning that you can record any telephone conversation and in person meeting as long as you are a party to the conversation. Indiana follows suit, but Illinois requires consent of all persons party to the conversation.

At a public meeting, Indiana takes the position that you can record all you want but the status of video taping is unclear. In Ohio, public meetings can be recorded. The Attorney General of the State of Ohio has issued an opinion that video taping public meetings is permissible so long as the video taping does not interfere with the meeting.

As to meetings of not-for-profit corporations and other public service organizations, those organizations dictate the rules as to what is allowed at the meeting. So if the organization decides that there will be no recording or video taping at any of the designated meetings, then those rules will apply.

### **Assault with a Car**

**Q.** My girlfriend and I were nearly killed on our motorcycle while traveling in Southern Indiana on I-64. A driver took exception to us on the road. Words were exchanged, and afterwards, he used his vehicle to hit us. A retired Chicago cop was following us and saw the whole thing. We survived but with injuries. Even though the state trooper on the scene said the bad guy would be charged with a felony, I just received the report that he was only charged with a misdemeanor. I am so upset I can hardly see straight. It seems this guy is getting off with almost killing us. What can I do to see that justice is done?

– A.B.A.T.E. of Illinois member

**A:** ABATE will help. We will learn the name of the prosecutor assigned to the case. The prosecutor should be assisted with all the information available to us. For example, make sure he has contact information for all witnesses. A face to face meeting between you and the prosecutor is critical. He needs to know that you are going to go the distance regarding your case. Namely, that you will travel to the place of trial in southern Indiana to testify and to follow proceedings. In other words, you have to convince the prosecutor that you will invest the time and effort necessary to get a conviction. Offer to assist the prosecutor in contacting the retired Chicago cop who was following you and witnessed the incident. Perhaps you can offer to let him ride with you for trial to save him the expense of presenting his testimony. We will use our contacts to make sure your case does not drop through the cracks in the prosecutor's office.

### **July 4 th Revisited**

The Fourth of July is my favorite day of the year – bar none. So much so that I almost forget the underlying meaning. Fourth of July morning I opened the newspaper to find on the front page of the New York Times a report about Brendan Marrocco, a 19 year old soldier from Staten Island, New York who served in Iraq. Brendan is notable for what he left in Iraq during his service – all four limbs. To make it painfully clear – both arms and legs. I was doing okay reading about Brendan until I came to the part where he says “I wish they would have left me just one limb - any limb.” I realize that many of our young people have sacrificed much for our country, but Brendan's experience struck a cord with me. Equally painful, was his report that he and his girlfriend had “cooled things down” for a while. It seems that pity for him versus love for him has become an issue in their relationship. As we go about our lives, let us not forget those who have made the ultimate sacrifice, but let us also remember those who continue to pay everyday of their life. In Brendan's case, he will pay mentally and physically until the day he dies. His life expectancy – 60 more years.

Ride Safe and Free,  
Rod Taylor  
ABATE Legal Services

**Remember, injured ABATE members pay only 28 ½% of total recovery and expenses as approved by client, consistent with and conforming to applicable state law. Elsewhere, you may pay 33 ⅓%, 40% or even 50% of your recovery. And, ABATE members are not charged for recovery of damage to your motorcycle, and have access to a 24-hour toll-free telephone number.**

*If you have any questions you would like to ask the lawyer, please submit them to ASK OUR LAWYER, at [rodtaylor@abatelegal.com](mailto:rodtaylor@abatelegal.com) © 2010, A.B.A.T.E. Legal Services*