

PLAINTIFF PETER,

Plaintiff

DOCKET: C-0000001

SEC: 1

VERSUS

DEFENDANT DARREN,

Defendant

19th JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

NOW INTO COURT, through undersigned counsel, comes Plaintiff Peter, who represents that there is no genuine issue of material fact in dispute and that Plaintiff Peter is entitled to judgment in his favor as set forth in his Petition, pursuant to La. C.C.P. Art. 966.

I. STATEMENT OF UNDISPUTED FACTS

I.

On September 4, 2017, Plaintiff Peter was stationary in a parking space on Webster Street in Penn's Woods, Louisiana. (Plaintiff's Exhibit B).

II.

The parking space was on-street parking and Plaintiff Peter's motorcycle was legally parked in the on-street parking space. (Plaintiff's Exhibit B).

III.

At the same time, a motor vehicle being driven by Defendant Darren was heading westbound on Webster Street. (Plaintiff's Exhibit B).

IV.

Then, without warning, Defendant Darren's vehicle attempted to park in a space adjacent to the parking space where Plaintiff Peter's motorcycle was parked. (Plaintiff's Exhibit B).

V.

Plaintiff Peter had not moved from the parking space where the motorcycle was parked, when Defendant Darren vehicle struck Plaintiff Peter. (Plaintiff's Exhibit B).

VI.

As a result of the collision, Plaintiff Peter suffered numerous injuries including, but not limited to, a fractured tibia, a fractured femur, a fractured tibia, a fractured pelvis, and a head injury. (Plaintiff's Exhibit C).

VII.

All of Plaintiff Peter's injuries were caused by the collision between Defendant Darren and Plaintiff Peter. (Plaintiff's Exhibit C).

VIII.

Plaintiff offers the following exhibits in support of his Motion for Summary Judgment:

Plaintiff's Exhibit A – Title Certificate of Plaintiff's Vehicle

Plaintiff's Exhibit B – Driver's Accident Report of September 4, 2017

Plaintiff's Exhibit C – Certified Deposition Transcript of Plaintiff Peter

Plaintiff's Exhibit D – Sworn Affidavit of Plaintiff Peter

II. MOTION FOR SUMMARY JUDGMENT

“[A] motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law.”¹ The burden of proof on a motion for summary judgment begins with the mover.² Although Plaintiff Peter bears the burden of proof in supporting this motion “summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action.”³ “[This] procedure is favored and shall be construed to accomplish these ends.”⁴ Accordingly, jurisprudence has recognized that summary judgment may be rendered on the issue of liability alone although a genuine issue as to the amount of the damages remains to be decided at a trial on the merits.⁵ However, if the mover does not bear the burden of proof at trial and demonstrates “the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense,” then the burden shifts. The adverse party must then “produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law.”

¹ La. C.C.P. art. 966 (A)(3). *Id.* at *3.

² La. C.C.P. art. 966(D)(1).

³ La. C.C.P. art. 966(A)(2).

⁴ *Smith v. Infirmary* 2019 WL 2030983, 2018-1028 at *3 (La. App. 4th Cir. 5/8/19).

⁵ LSA-C.C.P. art. 966(C). *See Williams v. City of New Orleans*, 93-2043 (La. App. 4th Cir. 5/17/94), 637 So. 2d 1130, 1131.

III. ARGUMENT

1. **Under Louisiana Law, when there is a change of lanes by a motorist immediately preceding an accident, the burden shifts to the defendant to show he or she was not negligent.**

The law is clear: “when there is a change of lanes by a motorist immediately preceding an accident, the burden of proof is on the motorist changing lanes to show that it was first ascertained that the movement could be made safely.”⁶ For example, in *Brewer v. J.B Hunt Transport, Inc.*, the Louisiana Supreme Court held that the standard of care is set forth in La. R.S. 32:104(A) imposes a duty on a motorist not to change lanes or turn his or her vehicle from a direct course or move right or left upon a roadway—unless and until such movement can be made with reasonable safety.⁷ The *Brewer* court also held that La. R.S. 32:79 imposes a duty on a driver to “drive as practicable entirely within a single lane and must not move from that lane until he or she has first ascertained such movement can be made with safety.”⁸ Thus, In a collision where the driver had immediately prior to the collision left his or her lane, the turning motorist is **presumed** to have breached this duty and he bears the burden of proving that he was not negligent.⁹ The defendant may overcome this presumption only by showing that he or she first ascertained that the movement could be made safely.¹⁰

For example, *Barrociere v. Batiste*, the Louisiana Fourth Circuit Court of Appeals held that a defendant driver had the burden of proof to show that she first ascertained that her movement could be safely made.¹¹ There, the defendant driver tried to pass a stationary van in a parking lot and collided with the plaintiff who was backing out of a parking spot in front of the stationary van.¹²

In the present case, no evidence exists, nor can any competent evidence be presented by Defendant that Plaintiff Peter or any other non-party caused or contributed to this accident. Plaintiff Peter was stationary in a parking spot at the time of the accident. Plaintiff Peter, in fact, was not operating or driving on the roadway. Defendant Darren cannot prove that he ascertained

⁶ *Brewer v. J.B. Hunt Transport, Inc.*, 2009-1408 (La. 3/16/10), 35 So.3d 230

⁷ *Id.* at 241.

⁸ *Id.*

⁹ *Id.* at 243.

¹⁰ *Id.*

¹¹ *Barrociere v. Batiste*, 1999-1800 (La. App. 4 Cir. 2/2/00), 752 So.2d 324

¹² *Id.* at 327.

that his move could be safely made because, if he had ascertained as much, he would have seen Plaintiff Peter stationary in the parking spot. The burden of proof in this case is on the defendant, to absolve himself of a presumption of liability, which, based on the discovery propounded, he cannot do. Therefore, Plaintiff Peter should be granted a Partial Summary Judgment on the Issue of Liability.

2. Applying the law to the undisputed facts in this case lead to the inevitable conclusion that there are no issues of material fact and partial Summary Judgment on the issue of liability is warranted as a matter of law.

In the present case, there is no genuine issue of material fact. The facts show that Plaintiff Peter has established that the Defendant changed lanes immediately preceding the accident, and thus the burden of proof is on the Defendant to show that it was first ascertained that the movement could be made safely. By law, the burden shifts to Defendant to absolve himself of liability. There is no evidence that Plaintiff Peter contributed to this accident in any manner. Therefore, after review of the exhibits and argument in the matter the court will also see that there are no issues of material fact about the facts of the accident and Defendant is not able to meet any burden of proof to which they can be absolved from a partial granting of Summary Judgment on the issue of Liability.

3. Defendant cannot overcome the substantive burden shifts and absolve himself of liability, as a matter of law.

While it is anticipated that Defendant may attempt to state that there is a material issue of fact concerning whether or not Plaintiff Peter has any comparative fault in this matter, the competent and admissible evidence clearly shows that there was nothing Plaintiff Peter could have done to avoid this accident. Similarly, none of the deposition testimony taken in this matter has produced any evidence whatsoever that Plaintiff Peter has any culpability in this accident. As such, Defendant cannot meet its burden to absolve himself and the reader of these facts is lead to the inescapable conclusion that Partial Summary Judgment on the Issue of Liability must be granted.

IV. NEGLIGENCE

Plaintiff Peter incorporates by reference all previous Paragraphs of the Complaint as if set forth in their entirety herein. As a motorist on a public thoroughfare, Defendant Darren owed Plaintiff Peter a duty of care. Defendant Darren breached its duty to Plaintiff Peter insofar as:

1. In driving the vehicle at an excessive, reckless and dangerous rate of speed under the circumstances;
2. In failing to have the vehicle under the proper control;
3. In failing to obey the rules of the road;
4. In failing to keep a proper look-out;
5. In failing to operate the brakes in such a manner that the vehicle could be stopped before colliding with the Plaintiff's vehicle;
6. In failing to observe the condition of the highway and the traffic thereon;
7. In failing to observe with reasonable care the traffic and road conditions including the location of the Plaintiff's vehicle;
8. In failing to avoid the accident by changing the direction of the vehicle;
9. In failing to bring the vehicle to a stop behind Plaintiff Peter's vehicle while Plaintiff Peter was legally stopped;
10. In failing to maintain an assured clear distance between Plaintiff Peter's vehicle and Defendant Darren's own vehicle; and
11. In failing to avoid the accident by applying the brakes.

Defendant Darren directly and proximately harmed Plaintiff Peter when Defendant Darren struck Plaintiff Peter on September 4, 2017.

As a result of this collision, Plaintiff Peter suffered significant and severe injuries.

WHEREFORE, Plaintiff Peter demands judgment against Defendant Darren, in an amount in excess of the prevailing arbitration limits, exclusive of prejudgment interest, post-judgment interest and costs; and for such other relief as this Court seems fit to award.

RESPECTFULLY SUBMITTED,

/s/ Clayton Christian
TEAM PLAINTIFF, LLC
Daniel Olivier (#00001)
Kailey L. LeBoeuf (#00002)
Clayton Christian (#00003)
Bianca Moore (#00004)
2 Florida Street, Suite 000
Baton Rouge, LA 70801
T: (225)555-5556
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Attorneys for Plaintiff Peter

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 18th day of February 2023 served a copy of the foregoing pleading to all parties to this proceeding by facsimile, electronic mail and/or depositing same in the United States Mail, properly addressed and postage prepaid.

/s/ Clayton Christian
CLAYTON CHRISTIAN

PLAINTIFF PETER,

Plaintiff

VERSUS

DEFENDANT DARREN,

Defendant

DOCKET: C-0000001

SEC: 1

19th JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

RULE TO SHOW CAUSE

Considering the foregoing Partial Motion for Summary Judgment on Liability on behalf of Plaintiff Peter:

IT IS HEREBY ORDERED that the Defendant, Defendant Darren, appear and show cause on the _____ day of _____, 2023, at _____ a.m./p.m., why the Partial Motion for Summary Judgment on Liability should not be granted.

Baton Rouge, Louisiana, this _____ day of _____, 2023.

HONORABLE JUDGE
19TH JUDICIAL COURT JUDGE, SEC. 1

Exhibit A

TITLE CERTIFICATE

For Department Use Only
Bureau of Motor Vehicles • PO Box 21212 • Baton Rouge 12345

A	VEHICLE INFORMATION				
	Vehicle Identification Number 0HFD123ABC456D789		Title Number 98765432109 ST		Registration Plate Number GRAYDAY
B	VEHICLE OWNER INFORMATION				
	last Name (or Full Business Name)	First Name	Middle Name	PA DI/Photo ID# or Bus. ID#	Date of Birth
	PETER	PLAINTIFF	—		01/08/1988
	Co-Applicant last Name	First Name	Middle Name	PA DI/Photo ID#	Date of Birth
	Current Street Address 5064 Yoh Avenue				
	City Jena			State LA	Zip Code 12345
C	SIGNATURE				
	I hereby certify under penalty of law that All information is TRUE and CORRECT and that I understand that any misstatement of fact is a misdemeanor of the third degree punishable by a fine up to \$2,500 and/or imprisonment up to one year.				
	_____ /s/ Plaintiff Peter Applicant's Signature		_____ 10/15/2017 Date		_____ Telephone Number
	_____ Co-Applicant's Signature		_____ Date		_____ Telephone Number

Driver's Accident Report

FORWARD THIS REPORT WITHIN 5 DAYS TO THE
LOUISIANA DEPARTMENT OF TRANSPORTATION, OFFICE OF PUBLIC SAFETY

T I M E	Date of Accident (Month - Day - Year) September 4, 2017	Parish E. Baton Rouge	Day of Week Monday	Hour (AM - PM) 1819	Check if Hit-Run <input type="checkbox"/>
	SEVERITY : Was Towing Required? UNIT 1: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO UNIT 2: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	Number of Vehicles Involved 2	Number Injured 1	Number Killed 0	
L O C A T I O N	TO PROPERLY LOCATE ACCIDENTS, USE AS LANDMARKS; SR SEGMENT NUMBERS, MILEPOSTS; INTERSECTION OF TWO HIGH-WAYS; CITY, BOROUGH, TOWNSHIP, OR COUNTY LINES.	City - Borough - Township Penn's Woods	On: (Street Name or Highway Number) Webster Street		
		At Intersection With: no intersection	If Not At Intersection : _____ Feet N S E W Of Station Marker - Intersection - Etc...		
M Y V E H I C L E • N O 1	Operator's Name (First, Middle, Last) Mr. Defendant Darren Mrs. Miss		Date of Birth 4/30/1999	Operator's License Number and State Louisiana	
	Address (Street, City, State, Zip Code) 37 Silver Lane, Baton Rouge, LA 12345		Vehicle License Number and State		
	Owner's Name (First, Middle, Last) Mr. Same Mrs. Miss		Year 2008	Make Ford	Model Focus
	Address (Street, City, State, Zip Code)		PA TITLE OR OUT-OF-STATE VIN		

USE THE FOLLOWING SECTION TO RECORD VEHICLE NUMBER 2, PEDESTRIAN, OR OTHER PROPERTY

OTHER	Operator's Name (First, Middle, Last) Mr. Plaintiff Peter Mrs. Miss		Date of Birth 1/8/1988	Operator's License Number and State Louisiana		
	Address (Street, City, State, Zip Code) 5064 Yoh Avenue Baton Rouge, LA 12345		Vehicle License Number and State			
	Owner's Name (First, Middle, Last) Mr. Mrs. Same Miss		Year 2016	Make Hurley	Model Road Master	
	Address (Street, City, State, Zip Code)		PA TITLE OR OUT-OF-STATE VIN			
	Description of damaged property:					

IF MORE VEHICLES/PEDESTRIANS/OCCUPANTS ARE INVOLVED USE ADDITIONAL REPORTS.

[illegible]

Insurance Information	Company	Insurance Information	Company
Unit 1		Unit 2	Policy No.

WEATHER:		ROADWAY:	
<input type="checkbox"/> Rain	<input type="checkbox"/> Snow	<input checked="" type="checkbox"/> Clear	<input type="checkbox"/> Foggy
		<input type="checkbox"/> Other	<input type="checkbox"/> Wet
		<input type="checkbox"/> Snowy	<input checked="" type="checkbox"/> Dry
		<input type="checkbox"/> Icy	<input type="checkbox"/> Rain

<div>0 = None</div> <div>1 = 1 o'clock</div> <div>2 = 2 o'clock</div> <div>3 = 3 o'clock</div> <div>4 = 4 o'clock</div> <div>5 = 5 o'clock</div> <div>6 = 6 o'clock</div> <div>7 = 7 o'clock</div> <div>8 = 8 o'clock</div> <div>9 = 9 o'clock</div> <div>10 = 10 o'clock</div> <div>11 = 11 o'clock</div> <div>12 = 12 o'clock</div> <div>13 = Top of Vehicle</div> <div>14 = Vehicle Undercarriage</div> <div>15 = Use when the initial impact was with a towed unit (such as utility trailer vehicle, horse van, etc...)</div> <div>99 = Unknown</div>	<div>12</div> <div>9</div> <div>3</div> <div>6</div>	<div>VEHICLE NUMBER 1:</div> <div>INITIAL IMPACT POINT 1-2</div> <div>LEGAL SPEED 25 MPH</div> <div>ESTIMATED SPEED 5-10 MPH</div>	<div>VEHICLE NUMBER 2:</div> <div>INITIAL IMPACT POINT 7-8</div> <div>LEGAL SPEED 25 MPH</div> <div>ESTIMATED SPEED 0-5 MPH</div>
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INSTRUCTIONS:

1. Draw Diagram As Clearly As You Can.

2. Show Your Vehicle As Number 1.

3. Label All Streets, Highways, and Landmarks.

4. Draw An Arrow In Circle Below So It Points North.

5. Complete Narrative.

Indicate North By Arrow

See attached diagram

GIVE A DETAILED DESCRIPTION OF THE ACCIDENT IMMEDIATELY PRIOR TO IMPACT, AT IMPACT, AND IMMEDIATELY AFTER IMPACT, REFER TO VEHICLES BY NUMBERS

Unit 1 was heading west bound on Webster. Unit 1 was apparently pulling into a designated parking space when the accident occurred. Unit 2 was parked directly in front of said parking space. Operator of Unit 2 was seated on vehicle when struck from behind. Speed of Unit 2 was undetermined, however, this officer discovered that the engine for Unit 2 was engaged on this officer's arrival. This officer turned Unit 2 off and removed keys. Said keys were placed into an evidence bag for safekeeping.

SIGNATURE

DATE 9/4/17

Webster

West
→



~~X~~ Montara Max's

* Final resting places
of vehicles

1 **Deposition of Plaintiff Peter**

2 And now, this 6th day of June, 2020, Plaintiff Peter, being duly sworn by the undersigned appeared at
3 the offices of MurdockPunxy, LLP, for the purposes of deposition by oral questioning.

4 (Questioning by Allie Blue)

5 Q. Good morning. We met earlier today before your deposition, but for purposes of the record, can you
6 please state your name?

7 A. Sure, my name is Plaintiff Peter.

8 Q. Peter, have you ever been deposed before?

9 A. No.

10 Q. Have you ever given testimony before in a civil or criminal case?

11 A. What is the difference? I am not sure I understand.

12 Q. Okay, sure. A civil case is like the case you filed against my client. A criminal case is a case in which
13 you are accused of violating a law.

14 A. Okay, I have testified at a criminal case before.

15 Q. What was the nature of that case?

16 A. I was charged with driving under the influence a few years back.

17 Q. Were you convicted?

18 A. No, halfway through my trial it was determined because I was first time offender, I was eligible for a
19 something called the accentuated rehab program.

20 By Ms. Swatkins

21 Q. You mean the accelerated rehabilitative disposition program, ARD?

22 A. Yes.

23 By Ms. Blue

24 Q. Okay, so you were admitted into the ARD program. Do you know what that means?

1 A. From what I understand I was never convicted of a crime, and because I met all of the requirements of the
2 program, my record has been expunged. I have been sober for three years now.

3 Q. Alright, are there any other testimony or lawsuits that you have been a part of?

4 A. No.

5 Q. Great. So, there are a couple of ground rules that I would like to set up before we begin. First, when I
6 ask you a question, I expect you to tell me what you know when you answer that question. I do not want
7 to you guess or speculate, okay?

8 A. Sure.

9 Q. If you answer one of my questions, we can agree that you have provided a full answer, right, and that you
10 are not leaving anything out?

11 A. Okay. I agree.

12 Q. If you do not hear me or the question that I ask, please ask me to repeat it and I will be happy to do so,
13 alright?

14 A. Yes.

15 Q. Similarly, if I ask you a question and you do not understand it, please ask me to rephrase my question.
16 Can you do that?

17 A. I can.

18 Q. Anytime that you answer one of my questions, I am going to assume that you both heard and understood
19 the question I asked, is that fair?

20 A. Yes.

21 Q. Okay, let's start with the hard questions, how old are you?

22 A. I am 32.

23 Q. So, at the time of the accident you would have been 29?

24 A. Yes.

25 Q. And when were you born?

1 A. January 8, 1988.

2 Q. Where do you currently live?

3 A. 5064 Yoh Avenue in Baton Rouge.

4 Q. Is that the same address you lived at when you were involved in the accident in September 2017?

5 A. Yes.

6 Q. How long have you been at that address?

7 A. Just over two years. I moved there right before the accident from my hometown of Asbury Park.

8 Q. How far away is Asbury Park?

9 A. I'd say about a thousand miles or so. It's back east.

10 Q. Had you ever been to Baton Rouge before?

11 A. No. I was looking to make a clean start. I got a job here working for Dr. Googlay.

12 Q. Who is Dr. Googlay?

13 A. It is actually a what. Dr. Googlay is a website that people can use to check their medical symptoms and
14 get information about various medical conditions and medications and things like that.

15 Q. What do you do at Dr. Googlay?

16 A. I am in advertising. I sell advertising space to companies that may be interested in advertising on the site.

17 Q. Is this something you have been trained to do?

18 A. Yes, I went to college where I majored in marketing and minored in Spanish. I then went to work for
19 Rick's, which is a sporting goods store, which is where I worked until when I moved to Baton Rouge.

20 Q. You mentioned earlier that you moved here to get, I think you said, a clean start. Can you explain what
21 you mean by that?

22 A. Sure, I just felt like I was in a rut. I was not happy with my life and I started finding comfort in drinking.
23 I was in a long-term relationship and when my partner left me, I really went into a tailspin. I was drinking
24 every night, and then I got pulled over after I had a couple too many at the bar.

25 Q. I see, and you mentioned that you no longer drink?

1 A. That is correct. I started seeing a counselor and I was diagnosed with depression and anxiety. I began
2 taking Paxil for the depression, and I would take Klonopin on a daily basis to help with the anxiety. I also
3 have prescription for Xanax, but I only take that if I am having a panic attack.

4 Q. Were you taking these medications at the time of the accident?

5 A. Well, I take my Paxil and Klonopin every morning when I wake up. I did not take any Xanax that day.

6 Q. It is my understanding that your prescription bottle for Xanax was found at the accident scene, can you
7 explain that?

8 A. Well, yeah, I mean, I always have some with me. Panic attacks are not something that you can tell are
9 going to happen.

10 Q. So you are sure that you did not take any Xanax that day.

11 A. 100%. It had been some time since I had panic attack prior to the accident.

12 Q. Do you have them now?

13 A. Almost daily, ever since the accident. I probably have two or three a week.

14 Q. And do you know why?

15 A. I believe it is trauma from the accident. There are times that I am in traffic and all of sudden I just start to
16 lose it.

17 Q. How do you handle it?

18 A. I take a Xanax. That is why I have them.

19 Q. Well, do you continue to drive after taking the medication?

20 A. I do.

21 Q. Well, is that something you should be doing on that type of medicine?

22 A. I have never had anybody tell me not to. It does not affect my ability to drive.

23 Q. Have you been in any other motor vehicle accident since September 2017?

24 A. Yes, one, I hit a patch of ice and lost control of my vehicle. It wasn't anything major, but it was scary.

25 Q. And what type of vehicle do you drive now?

1 A. That depends. In the summer and nice days in the fall and spring I drive my motorcycle. On days that
2 the weather does not permit, I will drive my car.

3 Q. And it is also my understanding that you have received some traffic citations related to your motorcycle
4 driving, is that accurate?

5 A. It is not. I had one citation.

6 Q. What was that for?

7 A. Driving without a helmet, which is completely false.

8 Q. Why is it false?

9 A. I had just pulled into Portini Sisters to get a sandwich. I took my helmet off and a cop showed up and
10 gave me a ticket. Said he been following me for a couple of blocks and that I was not wearing a helmet.
11 He must have had me confused with somebody else.

12 Q. Well did you challenge the citation?

13 A. I did, but you can't fight city hall. The traffic court judge said it was a he said/she said argument, and she
14 found in favor of the cop. Big surprise there.

15 Q. And when did this happen?

16 A. About six months ago.

17 Q. Okay, and before we move on to the day of the accident, there is one last thing I want to ask you about.
18 You mentioned a few times you moved to Steelton to get a clean start. Did you have any problems at your
19 job at Rick's?

20 A. No. Not once. I worked there for five years without a single complaint about me. I received a raise and
21 a bonus every year.

22 Q. Okay. Thank you. Let's move on to the day of the accident. It's my understanding that at the time of the
23 accident, you were not licensed to operate a motorcycle in Steelton, is that correct?

24 A. Yes.

25 Q. And yet when you were struck, you were sitting on a motorcycle, correct?

1 A. That is correct, but I was not operating the motorcycle.

2 Q. Let's talk about that. First, the motorcycle you were sitting on was registered in your name, right?

3 A. Yes.

4 Q. And it was titled in your name as well, right?

5 A. Yes, I purchased it. I had recently received a pretty decent bonus from Dr. Googlay because I made a big
6 sale to Perdue. I had always wanted a motorcycle, so I went out and bought one. I guess I got ahead of
7 myself as I had not been licensed to drive one, and I had to take the test.

8 Q. Did you ever drive a motorcycle before?

9 A. When I was a kid and into my teens I was pretty big into dirt bike racing.

10 Q. Do you mean BMX?

11 A. No, I mean real dirt bike racing. So, for a very long time, I was riding dirt bikes, which are essentially
12 motorcycles specifically made for racing on dirt tracks.

13 Q. And you do not need a license to ride them?

14 A. No, not at that age, and those types of racing.

15 Q. So how did you get the motorcycle home if you did not have a license?

16 A. The dealership was nice enough to deliver it to my house.

17 Q. And when did you take your license test?

18 A. About three weeks after the motorcycle was delivered.

19 Q. But you did not drive the motorcycle prior to that?

20 A. No, I did not. It would have been illegal.

21 Q. Where was the test?

22 A. At the Louisiana Department of Motor Vehicles testing center.

23 Q. How far away from your home is that?

24 A. About three miles.

25 Q. And how did you get the motorcycle to the testing center?

1 A. I have a good friend I worked with at Dr. Googlay who drove it for me.

2 Q. And does this good friend have a name?

3 A. Yes. Tony Stork.

4 Q. Did Tony have a license?

5 A. Yes, but Tony did not have a motorcycle, so after I did not pass the test, I let Tony keep it until I did.

6 Q. And you answered one of my questions, which is I understand that you did not pass the motorcycle
7 licensing exam, right?

8 A. That is correct. I failed by a point. It was really disheartening.

9 Q. And it is my understanding that Tony kept the vehicle until the time of the accident, correct?

10 A. Yes.

11 Q. So, what were you doing on it at the time of the accident?

12 A. I was just sitting on it. Thinking about what it would be like to get out on the road. I needed some
13 motivation for the test.

14 Q. You would agree with me that the motorcycle was on, right?

15 A. It was on. Tony had just pulled into the spot about five minutes before the accident and I wanted to sit on
16 it while it was running. It wasn't in gear, and I had no intention of taking it for a ride.

17 Q. You are aware that a witness in the police accident report told the investigating officer they had seen you
18 remove the kick stand and it appeared that you began to pull out into traffic?

19 A. I am aware of that, but it did not happen. I don't have a license.

20 Q. And to be clear, you were not wearing a helmet at the time you were struck?

21 A. Well, considering that I was not planning on riding it, no, I was not.

22 Q. You are aware there was not a helmet found at the scene either, right?

23 A. I have no idea. I really can't tell you one way or the other.

24 Q. Do you know if Tony was wearing a helmet when he pulled up?

25 A. I don't know.

- 1 Q. Really? You seem to remember everything else about that day, but you can't remember that?
- 2 A. I told you, I don't remember.
- 3 Q. Tell me what you remember about the conditions that day.
- 4 A. What do you mean conditions?
- 5 Q. What time of day was it? What was the weather like? Was it still light outside? Those types of things.
- 6 A. It was after work. I leave around 5:30 p.m. every day unless I have project or something big that I am
- 7 working on.
- 8 Q. Let me stop you right there. Do you know if you left work around 5:30 p.m. that day?
- 9 A. I don't know for sure.
- 10 Q. Well, do you know if you were working on a project or anything that would have required you to stay
- 11 later?
- 12 A. Not that I recall.
- 13 Q. Alright, what was the weather like?
- 14 A. It was a sunny, warm day. I remember being really hot, but I do not recall the exact temperature.
- 15 Q. Do you know what time you met Tony?
- 16 A. It must have been around 6:00 p.m. I walked to the spot where I was meeting Tony, and it is about a half
- 17 an hour walk.
- 18 Q. How do you know you walked?
- 19 A. I remember it being a nice day and thinking that since fall and winter were coming, there might not be too
- 20 many more like it, so I wanted to get out and enjoy it while the weather held up.
- 21 Q. Do you remember if it was still sunny, or was it starting to get dark?
- 22 A. It was still sunny outside. It usually does not start getting dark around here until around 8:00 p.m. at that
- 23 time of year.
- 24 Q. Did you get to your meeting location at the same time as Tony?

1 A. No. Tony pulled up where I was waiting. Tony wanted to grab a beer and talk, so I agreed to hang out
2 and listen. Because Tony brought my motorcycle, I decided to just sit on it for a minute or two.

3 Q. I thought you said you were sober?

4 A. I am. Just because Tony wanted a beer doesn't mean I needed to drink one.

5 Q. But you were still meeting Tony at a bar?

6 A. Yes.

7 Q. And after you got on the bike, what happened?

8 A. Well, the bike was facing forward, so I could not see behind me, which is the direction that car that hit me
9 came from. At that point I remember Tony saying, "Hey, what are you doing?" I turned around and I
10 saw a car flying . Before I knew what happened, I woke up in the hospital.

11 Q. Do you remember where the motorcycle was parked?

12 A. Yes. It was in a space on the street.

13 Q. Were there other cars parked on the street?

14 A. Yes, street parking was available on both sides of the street.

15 Q. Do you remember if there was a car parked in front of you?

16 A. I do not.

17 Q. Tell me about your injuries. What happened as a result of the collision?

18 A. I broke both of my legs. Dislocated my sacroiliac joint, that's what connects your pelvis to your spine,
19 and I suffered a significant closed head injury. I was unable to work for six months because of the pain I
20 was in.

21 Q. Have you recovered from your injuries as of today?

22 A. I suppose, I mean, I am still sore every now and then, and sometimes I walk with a limp. Also, I think I
23 mentioned it earlier, I have more frequent panic attacks.

24 Q. So, if the accident did not happen, when were you scheduled to take motorcycle license test next?

25 A. On September 5, 2017.

1 Q. And it is my understanding that you were eventually able to pass the test, is that correct?

2 A. I did. Once I healed from all my injuries and completed all of my physical therapy, I was able to pass the
3 test with flying colors the next time that I took it.

4 WHEREUPON the deposition was concluded.

PLAINTIFF PETER,

Plaintiff

DOCKET: C-0000001

SEC: 1

VERSUS

19th JUDICIAL DISTRICT COURT

DEFENDANT DARREN,

Defendant

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

AFFIDAVIT OF PLAINTIFF PETER

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

Before me, the undersigned Notary Public, personally came and appeared PLAINTIFF PETER who, after first being duly sworn, did depose and state:

My name is Plaintiff Peter. I live at 5064 Yoh Avenue, Baton Rouge, in the Parish of East Baton Rouge. I make this Affidavit on personal knowledge, and it is true and correct to the best of my knowledge and belief. On of September 4, 2017, I had just gotten off work, and I was walking to Montana Max's to meet my friend Tony. My friend Tony keeps my motorcycle, and he brought it for me to look at. I do not keep my motorcycle because I do not have a motorcycle license. I have not been able to pass the test yet.

I arrived at Montana Max's around 6:00 p.m. It was a sunny day, very hot, and late in the afternoon. Tony parked my motorcycle in a parking spot on Webster Street in Penn's Woods. While I was waiting for Tony to come outside, I sat down on my motorcycle. It's fun just to hear the engine run and sit on it. While I was sitting on my motorcycle, I saw Tony come outside, point and say, "Hey, what are you doing?" I turned around and I saw a car flying. The next thing I knew, I was in the hospital.


PLAINTIFF PETER

SWORN TO AND SUBSCRIBED before me, Notary, on this the 15th day of February, 2023, in Baton Rouge, East Baton Rouge Parish, Louisiana.



NOTARY PUBLIC
Bar No: 00003
Commission for Life