

No. SC 93702

IN THE MISSOURI SUPREME COURT

CYNTHIA DECORMIER

Plaintiff - Appellant

v.

HARLEY-DAVIDSON MOTOR COMPANY GROUP, INC. and ST. LOUIS
MOTORCYCLE, INC. d/b/a GATEWAY HARLEY-DAVIDSON

Defendants - Respondents

Appeal from the Circuit Court of St. Louis County, Missouri
The Honorable John D. Warner, Jr.

BRIEF OF *AMICUS CURIAE* MOTORCYCLE SAFETY FOUNDATION
IN SUPPORT OF DEFENDANTS – RESPONDENTS

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Missouri Statute:

§302.134, RSMo 2000 6, 8

Missouri Regulations:

7 CSR 60-1.020 6

7 CSR 60-1.030 6

7 CSR 60-1.060 6

INTEREST OF AMICUS CURIAE

Founded over 40 years ago, the Motorcycle Safety Foundation (MSF) is a national, not-for-profit organization promoting the safety of motorcyclists with programs in rider training, operator licensing and public information. Its mission is to make motorcycling safer and more enjoyable by ensuring access to lifelong quality education and training for current and prospective riders, and by advocating a safer riding environment.

MSF provides leadership to the motorcycle safety community through its expertise, tools and partnerships. It works with the National Highway Traffic Safety Administration (NHTSA), U.S. Department of Defense, state governments, and other organizations such as the American Association of Motor Vehicle Administrators, to improve motorcyclist education and licensing.

MSF is the internationally recognized developer of comprehensive, research-based rider education and training curricula designed to develop or advance motorcyclists' riding skills. There are currently 9,993 MSF-certified RiderCoaches teaching at the 2,855 MSF-recognized training sites around the world, and over 7 million students have been trained with MSF curricula. Forty-eight states grant students who successfully complete MSF's Basic *RiderCourse* (BRC) a waiver of all or part of the motorcycle licensing tests.

Missouri law mandates use of MSF curricula and adherence to MSF standards in connection with the Missouri Motorcycle Safety Program. Missouri grants successful BRC students a waiver of its motorcycle licensing skill test. In 2012, 5,146 Missouri

residents successfully completed the BRC. There are 156 MSF-certified RiderCoaches (instructors) who are authorized to teach the BRC on behalf of 29 MSF-recognized training sponsors at 40 MSF-approved training ranges.

Defendant-Respondent Gateway Harley-Davidson is an MSF-recognized training sponsor and delivers Defendant-Respondent Harley-Davidson Motor Company's Riders Edge New Rider Course, which incorporates the BRC, through MSF-certified RiderCoaches.

CONSENT OF THE PARTIES

MSF received consent from counsel for Plaintiff-Appellant and counsel for Defendants-Respondents to file this *Amicus Curiae* brief.

JURISDICTIONAL STATEMENT

MSF hereby incorporates by reference the Jurisdictional Statement of Defendants-Respondents.

STATEMENT OF FACTS

MSF hereby incorporates by reference the Statement of Facts of Defendants-Respondents.

ARGUMENT

FINDING THAT A MERE CONCLUSORY ALLEGATION OF RECKLESSNESS IS SUFFICIENT TO DEPRIVE A PROVIDER OF STATE-ENDORSED MOTORCYCLE SAFETY TRAINING OF THE PROTECTION OF AN OTHERWISE ENFORCEABLE EXCULPATORY CLAUSE, WHICH WAS KNOWINGLY AND VOLUNTARILY AGREED TO BY A MOTORCYCLE TRAINING STUDENT, WOULD BE CONTRARY TO MISSOURI PUBLIC POLICY.

Nearly two decades ago, the Missouri legislature created a state motorcycle safety program and adopted nationally-recognized standards established and maintained by MSF. Among other things, MSF standards – adopted by the Missouri legislature – recognize the need to protect rider-training providers from liability arising from the inherent risks associated with students learning to ride a motorcycle.

Plaintiff-Appellant readily concedes that Missouri law allows exculpatory clauses to exonerate parties from future negligence. *See* Appellant's Substitute Brief at 5. MSF submits that this Court should reject Plaintiff-Appellant's suggestion to constrict the protection afforded to rider-training providers by allowing unsupported allegations of recklessness to invalidate enforceable exculpatory clauses knowingly and voluntarily agreed to by students.

In 1995, the Missouri state legislature created the Missouri Motorcycle Safety Program (MMSP) and directed the Department of Public Safety to establish standards for

and to administer the program. *See* §302.134.1, RSMo 2000. (Appendix A1). It further provided that the program's standards "for the motorcycle rider training and instructor training courses, shall, at a minimum, comply with the applicable standards of the Motorcycle Safety Foundation." §302.134.2, RSMo 2000.

In so doing, the legislature responded to a significant safety risk faced by motorcyclists. In 1994, 42 Missouri motorcyclists died in motor vehicle crashes. *See* "Traffic Safety Facts 1994–Motorcycles," U.S. Dept. of Transportation, National Highway Traffic Safety Administration. (Appendix A14). Taking into account the number of registered motorcycles, the Missouri motorcyclist fatality rate was 7.2 per 10,000 vehicles – 22% higher than the national motorcyclist fatality rate. *Id.*

In accordance with the legislature's direction, the Department of Public Safety promulgated regulations mandating that program training sponsors maintain training ranges that comply with MSF guidelines and continue to meet MSF requirements. *See* 7 CSR 60-1.020(1)(A)(2); 7 CSR 60-1.020(2)(A). (Appendix A4). The Department also mandated use of the current MSF curriculum, adopted MSF's accompanying standards, and required instructors to hold a current MSF certification. *See* 7 CSR 60-1.030(1)(A) (Appendix A5); 7 CSR 60-1.060(1)(Appendix A6).

Nearly 20 years after its creation, MMSP continues to strive "to make Missouri's highways safer for motorcyclists and motorists by reducing motorcycle crashes, injuries and fatalities through rider education and public information." Missouri Motorcycle Safety Program – About Us (Appendix A16). The Missouri Safety Center also emphasizes the importance of MMSP:

Motorcycle rider training experience has been proven to be an effective crash countermeasure and is related to the reduction of injuries in the event of crashes. These facts illustrate the need for developing and implementing high quality rider education programs.

University of Central Missouri – Missouri Motorcycle Safety Program (Appendix A15).

MMSP implements its programs through a network of 156 MSF-certified RiderCoaches who teach the BRC on behalf of 29 MSF-recognized training sponsors at 40 MSF-approved training ranges.

While effective in reducing motorcycle crashes, motorcycle rider training is not without risks to the student or the training sponsor. As part of their training, MSF RiderCoaches are advised of these risks.

Managing a group of novice motorcyclists in an environment of constant movement is a challenging task. Participant safety is the highest priority in the Basic *RiderCourse*. RiderCoaches must continuously observe and evaluate participants to ensure they meet minimum aptitude requirements for their safety and the safety of others on the range. Because learning a motor skill is an inherently risky activity, there may be instances when a participant loses control.

See Record on Appeal, Trial Exhibit 2 at 6. (Appendix A7).

The specter of liability for the inherent risks associated with students learning to ride a motorcycle threatens the viability of rider training programs. As a result, MSF's standards require RiderCoaches to "ensure [a liability] waiver is signed by each

participant” and provide a waiver for use. *See* Record on Appeal, Trial Exhibit 2 at 36 (Appendix A8) and Supplementary Materials at STLM 00271. (Appendix A 9).

Significantly, both the Missouri legislature and the Department of Public Safety adopted MSF standards – which instruct the RiderCoaches to obtain signed liability waivers from students desiring to participate in the course – as the public policy of Missouri. MSF submits that in so doing, the legislature recognized the importance of limiting the liability of training sponsors to ensure the MMSP network is adequate to serve the over 352,000 licensed motorcyclists in Missouri, as well as the thousands of new riders added each year.

By enacting §302.134, RSMo 2000, the legislature declared as public policy in this state that motorcycle safety training programs conducted in accordance with MSF standards must be made available to the citizens of Missouri. The existence of such programs hinges on the risks and costs associated with providing this training.

For the last two decades, in accordance with such public policy and MSF standards, participants seeking motorcycle safety training have signed waivers comparable to the release the Plaintiff-Appellant now asks this Court to invalidate. The claims asserted by the Plaintiff-Appellant allegedly arising from the exercise of judgment by Defendants’-Respondents’ RiderCoaches are precisely the type of claims that are waived and released by students when they choose to sign the waiver form.

The Plaintiff-Appellant, however, asks this Court to hold as a matter of first impression that the mere allegation of the possibility of something more than ordinary negligence requires the Defendants-Respondents to “put forth affirmative evidence” in

addition to the properly executed release “that Defendants’ actions did not constitute gross negligence or recklessness.” *See* Appellant’s Substitute Brief at 6. Such result would eviscerate the exculpatory clause in the pre-course liability waiver and threaten the availability of motorcycle safety training by significantly increasing the costs and risks of providing the programs – a result that directly conflicts with the legislature’s declared public policy and purpose for creating Missouri’s Motorcycle Safety Program.

Accordingly, the Plaintiff-Appellant’s invitation to constrict the protection from liability provided to motorcycle training sponsors should be declined.

CONCLUSION

For the foregoing reasons, *Amicus Curiae* Motorcycle Safety Foundation respectfully requests that this Court affirm the judgment of the Circuit Court of St. Louis County granting summary judgment to Defendants-Respondents.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served through the Missouri Supreme Court electronic filing system on this 27th day of January, 2014, to:

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies, pursuant to Rule 84.06(c), that:

1. The attached brief complies with the requirements and limitations contained in Missouri Supreme Court Rules 55.03 and 84.06.
2. This brief was prepared using:
 - a. Microsoft Word;
 - b. Times New Roman font; and
 - c. Font size 13.
3. Excluding the cover, signature block, certificate of service, certificate of compliance required by Rule 84.06(c) and appendix, the brief contains 1459 words and does not exceed the words allowed.
4. The electronic version of the brief, saved as a PDF in searchable format, has been filed via the Court's electronic filing system. The attorney has signed the original and will maintain a copy in accordance with Rule 55.03.

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