BICYLING AND THE LAW

A SERIES OF INFORMATIONAL ARTICLES

The following five articles were written by Jan Seigel Esq., a BTCNJ club member, lawyer and League of American Bicyclists instructor. After attending a BTCNJ club meeting related to what to do in the event of an accident, Jan volunteered to write a series of articles because he felt that many BTCNJ members needed further education and guidance on the topic.

The five articles build upon each other and are an invaluable resource as they provide practical information on insurance and rights for the bicyclist in New Jersey. They ran in the BTCNJ *MasterLink* magazine from August 2009 through January 2010 and have been compiled into this single document as a useful reference piece.

I. BICYLING AND THE LAW (OVERVIEW)

I was recently at a monthly meeting of the Club where Alan White, Esq., a New York attorney, addressed the members on the law governing bicycle accidents. Mr. White's talk was both informative and educational. The question and answer period clearly showed that the members have an interest in this area and a need to have their questions answered.

I have volunteered to write a monthly column for *MasterLink* to address these issues and answer your questions. My Ridgewood law firm handles only personal injury cases including a number of bicycle cases. As a member of the Club, I, along with others, took a series of courses given by the League of American Bicyclists and became certified as a League Cycling Instructor (LCI).

The columns will discuss the areas of accident law as it pertains to cyclists, such as: what to do if you've been in a bicycle accident, how your medical bills are paid and whether you can sue for money damages. The columns will explain New Jersey's no fault law which governs your bicycle accident if it involved an automobile.

An understanding of your automobile insurance policy is necessary and columns will be devoted to a discussion of PIP coverage (payment of medical bills), your tort threshold (an election you make when you purchase insurance that determines what you must prove to recover money damages), as well as an explanation of Uninsured Motorist coverage (UM) and Underinsured Motorist coverage (UIM) and when they apply.

If you have questions, please contact me through my web site www.SeigelLawFirm.com and I will try to answer them in future columns. Your questions will also give me a direction for future columns to follow.

The basic premise is that if you have been in a bicycle accident with an automobile, New Jersey's no fault law and your auto insurance policy – if one applies – will determine your rights. If the accident did not involve an automobile, no fault car insurance is not applicable. In a non-automobile related bicycle accident, your health insurance company will pay your medical bills.

Whether the accident involved an automobile may not always be obvious. What if you were cut-off by an automobile which caused you to lose control and crash? What if you were struck by an automobile but it did not stop and you cannot identify it? Both of these situations may be covered by your car insurance policy and you may be entitled to not only payment of your medical bills but payment of money damages for your injuries from your own insurance company!

II. BICYCLING AND THE LAW (MEDICAL BILLS)

This column will discuss who pays your medical bills if you've been in a bicycle accident. You may recall going to a doctor or hospital and completing a form which asks two questions:

1. Was your injury the result of your job?
2. Was your injury the result of an automobile accident?

If your answers were no, you were instructed to continue completing the form because your health insurance will pay the medical bill. If you answered "yes" to question #1, workers' compensation pays your medical bill. If you answered "yes" to question #2, that your injury was the result of an automobile accident, a no fault car insurance policy would pay your medical bill. Assuming you are not "on the job", your medical bills will either be paid by your health insurance, if an automobile was not involved or by your car insurance if an automobile was involved. The remainder of the column will deal with auto related bicycle accidents.

If you are injured in a bicycle accident with an automobile, your automobile insurance is primary and will pay your medical bills. You may elect to make your health insurance primary versus your auto policy but it is generally a mistake to do and not recommended by this writer. The standard automobile policy provides medical expense benefits up to $250,000 per person per accident. You may elect to purchase lower limits but once again it is not recommended. Standard PIP coverage has a $250 deductible and a 20% co-payment of the next $4,750. All expenses over $5,000 are paid at 100%. Thus, if your medical bill exceeds $5,000, PIP will pay all but $1,200 ($250 deductible and $950 co-pay). If you have health insurance, you can then submit the deductible and co-pay to your health care insurer for reimbursement.

Who is Covered. Your auto insurance policy covers you and any family member who resides with you. Thus, if your child resides with you and is injured in a bicycle accident with a car and your child does not have his or her own auto policy, your car insurance policy will pay the medical bills. The age of the relative or the relationship is unimportant. What is important is that the relative is uninsured and resides with you. If so, your insurance company pays.

What if there is no auto insurance coverage. The basic premise is if you are injured in a bicycle accident with an automobile the bills are paid by your auto insurance policy or that of a family member with whom you reside. But what if you don't have a car insurance policy and don't live with a relative? In that case, PLIGA, the state fund, will pay your bills.

III. CAN YOU SUE FOR MONEY DAMAGES?

As we have seen, bicycle accidents with automobiles are covered by New Jersey's No Fault Law and your car insurance policy. If you don't own a car then the car insurance policy of any relative with whom you reside will apply.

Each auto insurance policy in New Jersey has a "tort threshold" which determines what type of injury you must have in order to sue. There are only 2 types of thresholds but each has many names.

1. "Limitation on Lawsuit" threshold also known as the "verbal" or "lawsuit" threshold; and
2. "No limitation on lawsuit" threshold also known as the "zero" or "no" threshold.

When you buy car insurance in New Jersey you choose or elect one of the above two thresholds. But be careful! If you fail to elect a threshold, the insurance company automatically gives you the "limitation on lawsuit" threshold – the very one, as you will see, that you don't want. The threshold you select not only is binding on you but also your spouse and any children who reside with you.

The "limitation on lawsuit" option (also known as the "verbal" or "lawsuit" threshold) limits the legal rights of yourself, your spouse and your resident children to make a claim for money damages or file a lawsuit against a careless driver unless you sustain one of the following types of injury:

- Type 1 Death
- Type 2 Dismemberment
- Type 3 Significant Disfigurement or Scarring
- Type 4 Displaced Fracture
- Type 5 Loss of a Fetus
- Type 6 Permanent Injury (when a body part has not and will not heal to function normally)

The "no limitation on lawsuit" option (also known as the "zero" or "no" threshold) permits you to make a claim or to file a lawsuit against a careless driver for any and all personal injuries.

Although more costly, the choice of thresholds is clear: You should select the "no limitation on lawsuit" threshold which preserves not only your right to claim or sue for money damages but also the rights of your spouse and any children who reside in your home.

Two important points to remember for those who don't own their cars: (1) although any resident relative's insurance policy may pay your medical bills, only a parent's threshold is binding on you. If any other relative's policy applies, you will be deemed to have the "no limitation" option. (2) If you do not live with a relative who has insurance, PLIGA, the state fund, will pay your medical bills and you will also be deemed to have the "no limitation" option.

Finally, please note that if your bicycle accident involves a commercial vehicle such as a truck (look for an X in the license plate), you will be deemed to have the "no limitation" option despite what the applicable insurance policy says. Thus, being hit by a commercial vehicle is a "trump card" providing the injured party with the right to make a claim or sue for money damages for any injury.

IV. WHAT IS UM AND UIM?

UM (Uninsured Motorist Coverage) and UIM (Underinsured Motorist Coverage) are very important and very misunderstood provisions of your insurance coverage which as we have seen is applicable to all bicycle accidents which involve motor vehicles.

1. UM or Uninsured Motorist Coverage applies in 2 instances:
2. You are injured by a motor vehicle which is uninsured; or
   You are injured by a motor vehicle which left the scene of an accident and cannot be identified, i.e. a hit and run vehicle (Note: There need not always be a "hit" or contact to make this claim).

In both instances, depending on your injury and your tort threshold (see previous columns), you may be able to make a claim for money damages from your own insurance company. The liability provision of your insurance policy provides money damages to those you injure in an accident. The UM provision provides money damages to you and your resident family members who have been injured by an uninsured or unidentified vehicle.

UM coverage is inexpensive. It is to your benefit to have the highest UM coverage because, as we see, UM coverage protects you and your family. You can only purchase UM coverage to the extent of your liability coverage. Beware to check that your UM coverage is always equal to your liability coverage. Many times an insured advises his insurance company to raise his liability limits but forgets to simultaneously raise his UM limits.

UIM or Underinsured Motorist Coverage applies when the vehicle that caused the accident has less insurance coverage than you have i.e. is "under" insured compared to your vehicle. Note: The comparison is always between the other vehicle's liability limits and your UM/UIM limits. For example, let's assume you have a $300,000 UIM policy and the vehicle which causes the accident has a minimum policy of $15,000/$30,000. Once you collect $15,000 from the careless driver for your injury, you can then seek up to $285,000 from your own insurance company under your UIM coverage (the difference between your policy limit of $300,000 and the careless driver's policy limit of $15,000). Please realize that your injury may not be worth an additional $285,000 but you can obtain any additional amount that your injury is worth up to $285,000.

UM and UIM coverages in New Jersey are sold together as one. Always, always check to make sure that your UM/UIM coverage limit is the same as your liability coverage limit.

V. AUTOMOBILE INSURANCE CHECKLIST

We have seen in previous columns that your auto insurance policy governs many aspects if you have a bicycle accident with a motor vehicle. Your auto policy not only pays your medical bills, but also determines the type of injury you must sustain in order to make a claim or sue for money damages. It also provides you with UM coverage if you are injured by an uninsured or hit and run vehicle and UIM coverage if you are injured by a vehicle with less coverage than your own policy. Each of these topics has been discussed in greater detail in previous columns.

If your insurance policy is so important, what coverage should you select? This column will review your choices and serve as a checklist when you buy or renew your policy.

Type of Policy. There are two types of policies: The Standard and the Basic. The Standard policy provides liability coverage to protect your assets if someone makes a claim against you. In addition, the Standard policy provides uninsured motorist coverage if you or a resident family member

are injured by an uninsured driver. The Basic policy provides no liability or uninsured motorist coverage and only minimum medical coverage of $15,000.

- Purchase the Standard policy.

Policy Limits. The law requires minimum liability limits in New Jersey or $15,000 per person/$30,000 per accident (known as a "split limit" policy). However, insurance companies are required to offer coverage up to at least $250,000/$500,000 split limits or a $500,000 single limit.

- Purchase liability and UM/UIM coverage of $500,000 single limit or the highest limit you can afford.

Medical Expenses. The Standard policy provides medical expense benefits (PIP) coverage of $250,000 per accident. You may elect to purchase less coverage but you may not have enough insurance to pay your medical bills.

- Purchase $250,000 of PIP coverage.

If you are injured in an accident, your auto insurance is primary and will pay your medical bills. You may elect your health insurance as primary; however your health insurance plan may not provide coverage for auto accidents or may not cover your family members.

- Elect PIP primary.

Lawsuit Option. This is probably the most misunderstood of all insurance provisions. When you purchase a Standard policy you are required to elect a "lawsuit option" that will determine if you have the right to make a claim or file suit for money damages. You must select either the "limitation on lawsuit" option on the "no limitation on lawsuit" option.

The "limitation on lawsuit" option (also known as the "verbal" threshold) eliminates the legal rights of yourself, your spouse, and any children who reside with you to make a claim or file suit for money damages against a careless driver unless you sustain one of the following types of injury:

(1) Death
(2) Dismemberment
(3) Significant scarring or disfigurement
(4) Displaced fracture
(5) Loss of a Fetus or
(6) A permanent injury

The "no limitation on lawsuit" option (also known as "no threshold" or "zero threshold") permits you to make a claim or file suit for money damages against a careless driver for any type of injury.

- Elect the "no limitation on lawsuit" option.

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