

# Insurance Coverage Issues Involving Pocket Bikes



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New Yorkers cannot help but notice the recent intrusion of the ubiquitous and noisy "pocket bikes" also known as "rice bikes" or "ninja bikes" and "pocket rockets". These unique bikes are attractive, chrome covered, mini replicas of racing bicycles. The insurance coverage for these vehicles is complex and at times unsettled.

The New York State Vehicle and Traffic Law ("VTL") has been amended to respond to the ever-expanding types of vehicles available. The statute addresses these pocket bikes in VTL Section 121-b, which defines "Limited Use Motorcycles" as Limited Use Vehicles which have two or three wheels, a seat or saddle for the operator and a certain maximum performance speed.

The Limited Use Motorcycles are classified into three categories by their maximum speeds as follows: Class A limited use motorcycles have a maximum speed of 30 to 40 MPH; Class B limited use motorcycles have a maximum performance speed of 20 to 30 MPH; and Class C motorcycles have a top speed of not greater than 20 MPH<sup>1</sup>.

Examples of Class A limited use motorcycles are the Jet HK-50 Pocket Bike or Ninja Pocket Bike V2. The Ninja Pocket Bike is equipped with a 4.2 HP engine, two wheels, a seat, weighs 36 pounds, can carry 250 pounds and has a maximum speed range of 40 to 45 MPH. The Jet HK-50 Pocket Bike is equipped with a power motor, two wheels, a seat and has a speed range of 30 to 35 MPH. Mopeds, which have two wheels and are larger, weighing in the range of 185 to 198 pounds, and generally have a maximum speed of 40 MPH, fall into the Class A limited use motorcycles. Reilley v. Department of Motor Vehicles of the State of New York, 240 AD2d 296 (1<sup>st</sup> Dept. 1997).

Title XI, Article 48-A of the VTL, and Title 15 of the New York Administrative Code, Part 102, address the applicable registration, insurance, equipment and other requirements of the limited use vehicles. Article 48-A of the VTL is entitled, "Registration of Limited Use Vehicles", which is comprised of Sections 2260 through 2270 of the VTL.

## Equipment

Pursuant to VTL Section 2265, and 15 NYCRR Section 102.4 (a)(2) and (a)(3), Class A Limited Use Motorcycles are required to be equipped in the same manner as motorcycles, so that VTL Sections 381 (6)

and 381 (7) are applicable. Section 381 obligates an operator to wear a "protective helmet" (Subsection 6), as well as "goggles or a face shield" (subsection 7).

Class B and Class C Limited Use Motorcycles are subject to the goggle and helmet requirements as well, but are not required to comply with the motorcycle lighting equipment requirement.

## Registration, Inspection and Liability Insurance

According to VTL Section 2261(1), and 15 NYCRR Section 102.2(b)(2), Class A Limited Use Motorcycles, which includes pocket bikes, may be operated upon public highways and streets, so long as the vehicles are properly registered in accordance with the provisions of VTL Section 410.

Class B and Class C Limited Use Motorcycles must be properly registered and may only be operated in the right hand lane or usable right hand shoulder of public highways (VTL Section 2262). There is no such restriction for Class A Limited Use Motorcycles, which may be used in any traffic lane. (See, 15 NYCRR Section 102.2(b)(3) and 102.2(b)(4)).

Only Class A Limited Use Motorcycles are subject to the periodic inspection requirements contained in VTL Section 301, pursuant to 15 NYCRR Section 102.3(a).

Further, Class A and Class B Limited Use Motorcycle must maintain an owner's policy of liability insurance having limits of \$25,000/50,000. There is no obligation that Class C Limited Use Motorcycles be covered under such a liability policy (See, VTL Section 2265(3), which discusses the applicability of VTL Section 345, and 15 NYCRR Section 102.3(b)(1)).

Moreover, the provisions of VTL Article 6 (Motor Vehicle Financial Security Act), Article 7 (Motor Vehicle Safety Responsibility Act) and Article 8 (insurance policies on vehicles transporting passengers for hire) are applicable to Classes A, B and C Limited Use Motorcycles, except that Article 6 is not applicable to Class C. *Id.*, and *In re Vincent H.*, 3 Misc.3d 900 (NY Fam. Ct. 2004).

Additionally, the liability policies for Classes A and B must contain a no-fault endorsement, pursuant to Insurance Law Section 5103 (f).

Also, the Website of the Department of Motor

*Continued on page 10*

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# Insurance Coverage Issues Involving Pocket Bikes

Continued from page 8

Vehicles, [www.nydmv.state.ny.us](http://www.nydmv.state.ny.us), contains a "Guide to Limited-Use Motorcycle Requirements", which is a chart that is helpful for information-at-a-glance.

## PIP Coverage Under an Automobile Liability Insurance Policy

Occupants<sup>2</sup> of a motorcycle are not entitled to first party benefits, also known as no-fault or Personal Injury Protection (PIP) benefits, under an automobile liability policy, pursuant to Insurance Law Section 5103(a)(1).

Similarly, occupants of Class A and Class B Limited Use Motorcycles are also not entitled to no-fault benefits under an automobile liability policy. Interestingly, however, it appears that occupants of Class C Limited Use Motorcycles may be entitled to such benefits under an automobile liability policy.

Insurance Law Section 5103(a)(1), provides, in pertinent part, as follows:

Section 5103. Entitlement to First Party Benefits; additional financial security required

(a) Every owner's policy of liability insurance issued on a motor vehicle...shall be liable for the payment of first party benefits to:

(1) persons, other than occupants of another motor vehicle or a motorcycle, for loss arising out of the use or operation in this state of such motor vehicle....(Emphasis added.)

By the plain meaning of the terms of the above statute, occupants of motorcycles are excluded from receiving no-fault benefits under an automobile liability policy. Nationwide Mutual Insurance Company v. Riccadulli, 183 AD2d 111 (2<sup>nd</sup> Dept. 1992)(where the Court, in ruling on an uninsured motorist claim made by a passenger of an all-terrain-vehicle ("ATV"), declared that motorcycles were expressly excluded from no-fault benefits; Innes v. Public Service Mutual Insurance Company, 106 AD2d 899 (4<sup>th</sup> Dept. 1984); Nami v. Tingaris, 127 Misc.2d 312 (Onondaga County, 1985).

The term "motorcycle" as used in the Insurance Law, encompasses Class A and Class B Limited Use Motorcycles but not Class C. This is because the definition of the term "motorcycle" as set forth in Section 5102 (m) of the Insurance Law, includes "any motorcycle", as defined in Section 123 of the VTL, and which is required to carry financial security pursuant to VTL Article 6, 8 or Article 48-A. Article 6 is the Motor Vehicle Financial Security Act, Article 8 relates to vehicles transporting passengers for hire, and Article 48-A provides for Registration of Limited Use Vehicles.

VTL Section 123 defines a motorcycle as a "motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels...". This definition encompasses the Limited Use Motorcycles defined in Section 121-b; Section 121-b is

simply a further sub-classification of a motorcycle, by speed; that is, if a motorcycle falls into Section 123, it also falls into 121-b, if the speed is limited.

However, Class C Limited Use Motorcycles are not required to maintain liability insurance (as indicated above, pursuant to Article 6, 8 or 48-A). As such, Class C Limited Use Motorcycles are not excluded from entitlement to PIP benefits under an automobile liability policy, pursuant to Insurance Law Section 5103.

## Uninsured Motorist Coverage Under an Automobile Policy

A motorcycle is afforded coverage under the uninsured motorist ("UM") endorsement of an automobile policy. Lalomia v. Bankers & Shippers Insurance Company, 31 NY2d 830 (1972) (where the Court of Appeals held that an uninsured motorized bicycle qualified for UM coverage under an automobile policy); Country-Wide Ins. Co. v. Wagoner, 45 NY2d 581 (1978); (where the Court of Appeals determined that a motorcycle operator, who was a resident of his father's home, was an insured under his father's auto policy for purposes of UM benefits); Nationwide Mutual Insurance Company v. Riccadulli, 183 AD2d 111 (2<sup>nd</sup> Dept. 1992); Matter of Home Mut. Ins. Co. of Binghamton N. Y. v. Marlin, 82 AD2d 807 (2<sup>nd</sup> Dept. 1981); Matter of St. John, 105 AD2d 530 (3<sup>rd</sup> Dept. 1984); Len v. Lumbermens Mut. Cas. Co., 80 AD2d 682 (3<sup>rd</sup> Dept. 1981); Geiger v. Insurance Co. of North America, 41 AD2d 796 (3<sup>rd</sup> Dept. 1973).

As such, since the definition of "motorcycle" (VTL Section 123) encompasses Limited Use Motorcycles (VTL Section 121-b), as stated above, an insurer that issues an automobile liability policy will be liable to pay uninsured motorist benefits to the occupants of a Limited Use Motorcycle, in the event it were uninsured.

## Conclusion

The insurance coverage available, registration and inspection requirements applicable to pocket bikes is determined by the class of motorcycle, as defined by VTL 121-b (Class A, B or C). Maximum speed performance is the determinative factor. Once the class of the vehicle has been established, the applicable statutes must be viewed on a case by case basis to determine what defenses are available to any carrier defending litigation involving pocket bikes.

<sup>1</sup> A "motorcycle" is defined in Section 123 of the VTL, as "every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground...".

<sup>2</sup> The courts have held that the word "occupant" as used in the foregoing statute, encompasses an operator as well as a passenger, so that an operator and passenger of a motorcycle are both excluded from an automobile's no-fault benefits.