

Motorcycle Litigation: No Easy Ride

Generally, insurance carriers of motor vehicles in New York State must provide first party coverage for their insureds, regardless of fault, up to \$50,000. This includes: medical expenses, lost earnings and costs for medical supplies.¹ However, Article 51 of the New York State Insurance Law, entitled the "Comprehensive Motor Vehicle Reparations Act" and commonly known as the "No-Fault Law," specifically excludes occupants of motorcycles from this coverage.²

Insurance Law §5103(a)(1) provides that "every owner...shall be liable for: the payment of first party benefits to (1) Persons, other than occupants of another motor vehicle or a motorcycle." Paragraph (2) provides for first party benefits to the named insured and members of his household, and again excludes "occupants of motorcycles."³ Even the statutory death benefit of \$2,000 for the death of a covered person is denied to the estate of the person if he was the occupant of a motorcycle.⁴

The word "occupant" is ascribed its normal dictionary meaning by the courts. Thus, in *Innes v. Public Service Mut. Ins. Co.*,⁵ the plaintiff as operator of his motorcycle is also an "occupant" and is properly excluded from no-fault coverage.

Pedestrians who are struck by a motorcycle are, however, entitled to first party benefits. A motorcyclist is required to maintain liability insurance under the financial security provisions of the Insurance Law. Therefore, the benefits under such a policy run only to pedestrians. Specifically excluded are "occupants of such motorcycle, another motorcycle or any other motor vehicle for loss arising out of the use or operation of the motorcycle."⁶

In *Fleming v. Allstate Ins. Co.*,⁷ a party was straddling a motorcycle with both feet on the shoulder of the road talking to another indi-



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vidual without sitting on the motorcycle at the time he was struck by an automobile. The court held that he was "occupying a motorcycle" within the no-fault insurance policy thus excluding coverage for individuals occupying a motorcycle.

While a motorcyclist's status as a non-covered person deprives him of the right to recover first-party benefits under no-fault, he

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is entitled to pursue his common law remedies in a third-party action against the owner and operator of a motor vehicle involved in the accident. Under these circumstances, he is not required to comply with the "serious injury" provision of Insurance Law §5104.⁸

Conversely, pedestrians or occupants of motor vehicles who are injured as a result of an accident with a motorcycle must prove that they have sustained a "serious injury" in order to recover money for personal injuries.⁹

Oftentimes, the passenger of a motorcycle is the spouse of the operator. Should the spouse become injured by the negligence of his or her operator/spouse, the rules of spousal coverage apply. Section 313 of the New York State General Obligations Law passed in 1937 allowed a married woman to sue her husband, thus doing away with spousal immunity.¹⁰ Simultaneously, however, in 1937, Section 3420(a)¹¹ of the Insurance

Law was passed which required that, unless an express provision is in the policy of insurance, no policy of insurance was deemed to insure a spouse for injury where the injured spouse must prove the culpable conduct of the insured's spouse. Thus, in the case of motorcyclists, spousal coverage must also specifically be purchased or an injury due to the spouse's negligence will not be covered. Typically, the cost of spousal coverage in a policy is 5 percent higher than a policy without such coverage.

Traffic Laws and Regulations

All rights and duties applicable to the driver of any other motor vehicle are applicable to every person operating a motorcycle.¹² A motorcycle is entitled to full use of a lane and no other vehicle can be driven so as to deprive the motorcycle of the full use of a lane. Motorcycles may operate two abreast in a single lane,¹³ however, more than two motorcycles abreast in one lane is prohibited.¹⁴ In litigating motorcycle cases, one must be cognizant that violation of a statute can be charged to the jury as constituting negligence.¹⁵

The operator of a motorcycle cannot overtake or pass in the same lane as the vehicle being overtaken.¹⁶ It is prohibited to operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles.¹⁷ Motorcyclists are expressly prohibited from clinging to other vehicles or streetcars.¹⁸

Every motorcycle must have the following equipment:

Approved lights, including headlight, taillight, stop lamp and license plate lamp, at least one red reflector on the rear and directional signals if the motorcycle was originally equipped with directionals or is a 1985 or newer model; brakes, on 1971 on both wheels; a horn; muffler, "cut-outs;" handlebars no more than 15 inches higher than the seat; a seat for the operator and a passenger » Page 6

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Motorcycles

« Continued from page 4

seat in the rear if a passenger is carried (no more than one passenger is permitted).¹⁹

All motorcyclists in the state must use approved motorcycle helmets as set forth by the federal statute vehicle safety standards.²⁰ They must wear approved eye protection and any windshields must meet approved standards.²¹ The headlight and taillight of a motorcycle must be on at all times when operating on the road.²²

Children as Passengers

A child of any age may be a motorcycle passenger in New York State.²³ Every passenger—child or not—must wear an approved helmet and ride on a permanent, regular seat on a motorcycle designed to carry more than one person.²⁴ The passenger must sit face forward, one leg on each side of the motorcycle, with each foot reaching a foot peg, unless he or she is seated in a properly attached sidecar.²⁵ It is illegal for an operator to carry a passenger, or for the passenger to ride, in a position that will interfere with the operation or control of the motorcycle or the vision of the operator.²⁶

Application of §1601

CPLR §1601(1), providing limited liability of persons jointly liable, does not apply to motorcyclists, as motorcyclists are specifically exempted from the limitation of liability under CPLR §1602(6).²⁷ Thus, if a jury finds a defendant motorcyclist 1 percent liable, the plaintiff may elect to execute the whole judgment against the defendant motorcyclist and leave that defendant motorcyclist to recover the proportionate share of the judgment against the remaining defendants.

Limited Use Motorcycles

All litigants involved in motorcycle cases should be aware of the fact that for purpose of the Vehicle and Traffic Law, "limited use motorcycles" are divided into three different classes. These include scooters, "ninja bikes," "pocket rockets" and "pocket bikes." Section 121-b of the Vehicle and Traffic Law defines "Limited Use Motorcycles" as follows: Class A: motorcycles that have a with a maximum speed

of 30-40 MPH; Class B: motorcycles that have a 20 to 30 MPH; Class C: motorcycles that have a top speed of not greater than 20 MPH.²⁸

Class A motorcycles are required to be equipped in the same manner as motorcycles.²⁹ Thus, their riders must wear helmets or goggles or fire shields.³⁰ Class B and C are subjected to helmet and goggle requirements, but are excluded from lighting equipment requirements.³¹

Class A motorcycles may be operated on public highways and streets so long as they are properly registered in accordance with the VTL.³² The litigator must be aware of the fact that certain "ninja pocket bikes," although much smaller than most motorcycles, generally have a maximum speed of 40 MPH or greater and thus fall into the Class A limited use motorcycles category. Class B and Class C Limited Use Motorcycles can only use right hand lanes or right hand shoulders of public highways.³³

In terms of insurance only, Class A and B motorcycles must maintain owners' policies of liability insurance with limits of \$25,000/\$50,000. There is no such obligation for Class C limited use motorcycles to be covered.³⁴

A novel theory of liability was pleaded by a motorcycle rider in *Crawford v. Village of Millbrook*.³⁵ The motorcyclist alleged that at the time of his accident an insufficiently large amount of gravel on the road created a hazard which caused his accident. He produced eyewitnesses and a paving expert to support his theory. The court reversed the defendant Village's motion for summary judgment as a matter of law. Plaintiff was allowed to proceed to a new trial on whether the defendant negligently resurfaced the road one month earlier.

Uninsured Motorist Coverage

A final concept to be familiar with in handling motorcycle litigation is the fact that a motorcycle is afforded coverage under the uninsured (UM) endorsement of an automobile policy.³⁶ As such, an insurer that issues an automobile liability policy will be liable to pay the insured motorist benefits to the occupants of a motorcycle in the event they are uninsured.

Conclusion

In all personal injury cases thorough preparation and familiarity with the applicable statutes

and case law is crucial to proper handling. This is especially true in motorcycle litigation. In a weak economy, more people will turn to motorcycles for transportation and as a result, claims will rise. It is the obligation of the practitioner to learn the nuances of this area of the law; and that is no easy ride.

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1. Insurance Law §5103.
 2. Insurance Law §5103(a)(1).
 3. Insurance Law §5103(2).
 4. Insurance Law §5103(4).
 5. *Innes v. Public Service Mut. Ins. Co.*, 106 A.D.2d 899, 483 N.Y.S.2d 874 (4th Dept 1984).
 6. Insurance Law §5193(f).
 7. *Fleming v. Allstate Ins. Co.*, 102 Misc.2d 994, 424 N.Y.S.2d 831 (Sup. Ct. 1980).
 8. Insurance Law §5104(a).
 9. Insurance Law §5104(a).
 10. General Obligations Law §3-313.
 11. Insurance Law §3420(g).
 12. Vehicle and Traffic Law §1250.
 13. Vehicle and Traffic Law §1252(a).
 14. Vehicle and Traffic Law §1252(d).
 15. Pattern Jury Instructions 2.26.
 16. Vehicle and Traffic Law §1252(b).
 17. Vehicle and Traffic Law §1252(c).
 18. Vehicle and Traffic Law §1253.
 19. Vehicle and Traffic Law §381.
 20. Vehicle and Traffic Law §381(6).
 21. Vehicle and Traffic Law §381(7).
 22. Vehicle and Traffic Law §381(8).
 23. Vehicle and Traffic Law §1250.
 24. Vehicle and Traffic Law §1251(a).
 25. Vehicle and Traffic Law §1251(b).
 26. Vehicle and Traffic Law §121(c).
 27. CPLR §1602(6).
 28. Vehicle and Traffic Law §123.
 29. Vehicle and Traffic Law §2265, 15 NYCRR §102.4(a)(2)(a)(3).
 30. Vehicle and Traffic Law §381(6), Vehicle and Traffic Law §381(7).
 31. Vehicle and Traffic Law §381(6), Vehicle and Traffic Law §381(7).
 32. Vehicle and Traffic Law §2261(1), 15 NYCRR §102.2(b)(2).
 33. Vehicle and Traffic Law §2262.
 34. Vehicle and Traffic Law §2265(3).
 35. *Crawford v. Village of Millbrook*, 61 A.D.3d 918, 878 N.Y.S.2d 149 (2d Dept 2009).
 36. *Lalomia v. Bankers & Shippers Insurance Company*, 31 N.Y.2d 830, 291 N.E.2d 724 (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 N.Y.2d 581, 384 N.E.2d 653 (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 A.D.2d 111, 589 N.Y.S.2d 356 (2d Dept 1992); *Home Mut. Ins. Co. of Binghamton N.Y. v. Marlin*, 82 A.D.2d 807, 439 N.Y.S.2d 404 (2d Dept 1981); *Matter of St. John*, 105 A.D.2d 530, 481 N.Y.S.2d 787 (3d Dept 1984); *Len v. Lumbermens Mut. Cas. Co.*, 80 A.D.2d 682, 436 N.Y.S.2d 431 (3d Dept 1981); *Geiger v. Insurance Co. of North America*, 41 A.D.2d 796, 341 N.Y.S.2d 481 (3d Dept 1973).

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