

Dealing With Your Accident, Before and After it Happens

By

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The unfortunate news about many of our friends who have been involved in car crashes lately has got me thinking that maybe it would nice to have some essential information about what we should be doing if we are involved in a crash. In speaking with Pat Krebs, we thought that my experience and expertise might be useful here. Therefore, I have written this article that I hope will give you some useful information about the law, car accidents in general and insurance. So, as we remain ever vigilant as we ride, we can also be armed with information in the event we need it.

The Pennsylvania Rules of the Road - The law in Pennsylvania is clear: bicycles are subject to the same criminal and motor vehicle laws as cars. Thus, if a driver of a car can be charged for driving under the influence, so can someone on a bike. And as improbable as that sounds, I have seen it happen. Likewise, if the driver of a car can be cited for running a stop sign, so to can a cyclist. This means that we must obey the rules of the road. We don't have a greater right of way than cars. Cars are not obligated to yield to us and we are not entitled to ride through stop signs, although that is common practice and some people argue that running a stop sign might actually be safer than stopping. But I will let that be your personal decision.

The converse to that statement, however, is also true, and for our purposes more important. Thus, we cyclists have the same rights to the road as cars. Consequently, cars do not have a right to push us off the road or demand that we ride on sidewalks. Car-bicycle crashes often result in a violation of the motor vehicle code. Most of the time the cause is inattention on someone's part. I would like to think that we cyclists are more attentive than motorists, but each accident is different. Knowing the basics, however, can make the difference between your securing your full rights under the law and being charged for the accident yourself. It would be impossible for me in this short article to instruct on each and every vehicle code, and it really isn't necessary here. What is important is that you know that you are subject to the same laws as cars.

Helping Yourself if There is an Accident - If you are in an accident, the police will likely come to the scene to investigate and possibly charge the responsible party. The statements the police take from the parties involved and write in the police report are important, but cannot be admitted in a court of law. The most important activity the police add is their investigation of the accident, and specifically what evidence the investigating officer finds following the impact, such as length of skid marks and location of debris. If all goes right, the officer will have taken good notes and included his or her conclusions in the police report. With good documentation, as a lawyer, I can better recreate the accident and argue based on the evidence in favor of the cyclist, despite the conclusions the police make in the police report. Thus,

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the better you are able to assist the investigating officer, the more thorough his and or her report is likely to be.

Often times the accident victim is unable to speak to the officer at the accident scene. Therefore, make sure that you contact the officer as soon as possible and request that he or she speak with you directly before the police report has been completed.

There are many things you can do after the accident that will help you protect your rights, whether you want to be compensated for your injuries, seek replacement or repair of your bike or defend yourself against charges. Having represented hundreds of people for injuries sustained in accidents, I can say that I am much more effective if I have good documentation from my clients from the start. Don't worry about overkill. You can never have too much documentation. Take photographs as soon as possible of the scene of the accident, of your bicycle, of your injuries and of the other vehicle, if possible. It is also helpful to write down how the accident happened in as much detail as you can remember as soon after the accident as possible. Finally, keep the clothing you were wearing after the accident. The color of the clothing may be important. The brighter the clothing, the easier it should have been for the other driver to have seen you. Having that clothing will help you make that argument in your defense if necessary.

Properly and thoroughly documenting your accident is not limited to the documentation you create. If you need to be compensated for your injuries, you will need to make sure that your health care provider is properly documenting your injuries during your visits and treatment. Presenting your injury claim is an interesting process and you will soon learn that the insurance companies that will likely be handling your claim, the insurance company representing the driver who hit you, will have vast resources at its disposal and it will insist that whatever injury you claim you have is properly supported by the medical records. Despite what you say happened to you, if it is not documented by your doctor, it didn't happen. That is why you must tell your doctor everything, even if you think it isn't important. If your doctor touches your neck and you say "ow!" don't expect that the medical records will state that your neck hurts. You must tell your doctor exactly what hurts, when it hurts and what activities make it hurt. You may feel like you are being a whiner, but thoroughness requires this kind of detail.

Insurance Explained and how you can Prepare now – If you have the misfortune of being in an accident, you will quickly learn how extensively insurance pervades the process of seeking adequate compensation for your loss. Insurance and the way insurance companies handle these matters is at the very core of your ability to secure proper compensation for your accident. I couldn't possibly summarize all I know about the insurance industry and how they handle accident cases in this article. Suffice it to say, the insurance industry has refined handling your accident claim to a science and the insurance companies have spent billions of dollars on specializing their claims handling. The documentation mentioned above will help greatly in this process. And obviously, as an attorney, I believe having your own experienced and knowledgeable advocate is the best way to equip yourself against the insurance company that represents the other driver. But consider the source of that advice and take it for what it is worth.

The other piece of insurance that is extremely important is the matter of insurance coverage. Understanding and having the proper insurance coverage is something that you can take care of now before anything happens. Riding without understanding your insurance coverage is kind of like riding your bike without knowing whether your brakes work properly. You wouldn't think of doing that, yet most of us get in the saddle without having a clue of what kind of coverage we have and whether that coverage

would even apply to us if we were in an accident. Okay, maybe there isn't a subject more boring than this, but trust me, this is information you can use.

There are essentially two types of insurance coverage in your auto policy. The insurance coverages on your policy either cover your damage or the damage you do to someone else. Pull out your declaration page and follow along. Trust me, this will help. The declaration page (or dec) has a list of coverages with a bunch of numbers after each coverage. For example, one of the coverages is BI. That stands for bodily injury. After that term, there will be a group of numbers, such as 50/100. What those numbers mean is that you have insurance that covers the bodily injury you cause to someone else in an accident and that the limit of that coverage is \$50,000 per person and \$100,000 per accident. That means that no one person can get more than \$50,000 from your insurance policy and the insurance company does not have to pay more than \$100,000 in total no matter how many people you injure in the accident. Once those policy limits are used up, you can be held personally responsible for the remaining damage you caused. So, let's say you fall asleep at the wheel and hit a bus full of people, 20 of whom are seriously injured. Each of those persons would have a claim against you for bodily injury, which your insurance company would handle up to the limits of your BI coverage. In this example, let's say you have the aforementioned 50/100 coverage. That means that you only have \$100,000 to take care of those 20 serious injuries. If \$100,000 is not enough to adequately compensate each of those 20 people, you could be personally responsible for the compensation over \$100,000. Are you looking at your dec page now? I thought you might be.

There is similar coverage for property damage you might cause in an accident. That coverage is represented on the dec as PD and has a figure such as 50 next to it. That means that you have up to \$50,000 of insurance funds to pay for property damage you cause, such as damage to a vehicle or a structure. If you cause an accident that totals a Ferrari and you only have \$50,000, again you may be personally responsible for the damage over \$50,000.

Okay, so now you are frantically looking at your dec and making a note to call your agent the next day, which is good. You are preparing yourself. Hopefully your agent will advise you on the proper amount of coverage you need. Actually, the math is quite simple, the more stuff you have, the more insurance you need. If you have millions in assets, you better get millions in insurance because if you don't have enough insurance, people you accidentally injure may potentially get your stuff.

Having now talked at length about BI and PD coverage (known as liability coverages), I am now going to tell you that they don't apply if you are riding your bike. If you cause an accident while on your bike, your auto policy does not cover any of the damage you cause to someone else. Why? Because your bike is not a motor vehicle (despite how much of a machine you might think you are on your carbon fiber Dura Ace System Six Cannondale). No, that insurance is found on your homeowner's policy. So now you have to call your agent about both your homeowners and auto policies. Fortunately, your homeowner's coverage is a lot easier to understand. It has a single liability limit, usually at least \$100,000. You can also purchase what is called an umbrella policy. An umbrella policy usually has a limit of at least \$1 million and actually covers any damage you accidentally cause, whether or not you are in your car. The umbrella coverage activates once the insurance company pays the limits on your auto or homeowners policy. The good news is that I have yet to see a situation where an umbrella policy was not enough. If you have a lot of assets, you need an umbrella policy.

Okay, so all this stuff about car insurance is great general information, but what does this have to do with me and my bike? Well, besides getting a little additional information, let me explain how the rest

of your coverage works. All of the other coverages on your dec are for you. Those other coverages, such as collision, comprehensive and medical benefits cover the damage you sustain in an accident, such as damage to your car and damage to you. Because we are talking about bike accidents, we don't care about the comprehensive and collision coverage. Those coverages are for your car. They won't cover your bike. The good news, is, however, that the medical benefits coverage, and wage loss coverage if you have it, will cover you if are injured in an accident.

Let me explain how medical benefits coverage works. Under Pennsylvania state law, every car owner is required to carry insurance. The coverage you must have is BI, PD and medical benefits. You need only have \$5,000 of medical benefits coverage, however. Further, if you are in an auto accident of any kind, no matter whose car you are in or whether you are on a bike or on your feet, you must use your auto insurance medical benefits coverage. The good part of this is that medical benefits coverage is easy to use and it doesn't carry a deductible or co-pay. You go to the hospital. You give the hospital your auto insurance information, the hospital bills your auto insurance, your auto insurance pays and you don't have to be involved. Pretty nice. Once you exhaust your auto policy limits, your health insurance should cover the rest, depending on the limits of your coverage. If you have wage loss coverage on your auto policy, that might apply to your bike accident too.

It is also important that you check your tort option. While it doesn't apply to a bike accident, if you are in a car and are hurt by some other driver's negligence, your right to compensation for your injuries may depend on whether or not you have full tort. Without full tort, which means you have limited tort, you can only receive compensation for injuries that are permanent or serious. I suggest full tort.

The final thought on insurance is the concept of uninsured and underinsured motor coverage. Both uninsured (UM) and underinsured (UI) motorist coverage are optional coverages. Their purpose is to ensure you are compensated for your injuries if you are injured by someone who either doesn't have any insurance or doesn't have enough. It might surprise you to learn that Pennsylvania only requires that you carry bodily injury insurance limits of 15/30. That means that many people are driving around with only \$15,000 of insurance to pay for the damage that they might do to you. Many others have no insurance at all. If you are seriously injured in a car accident, \$15,000 is not going to be enough to compensate you. Remember, this insurance has to pay you for whatever damage the accident causes, whether that be a broken arm, scarring, or an injury that renders you unable to work for long periods of time, or permanent disability. \$15,000 is simply not enough. Fortunately, your insurance company will offer you UM and UI motorist coverage you can add to your auto policy. This coverage is extremely important and by purchasing it, you can prepare yourself well in advance should the unthinkable happen. I would recommend at least \$100,000 worth of coverage for each coverage. If you have this coverage and the driver that hurts you has only \$15,000, or no insurance at all, then you will at least have your own coverage up to those limits to compensate you for your injury.

These are topics we hate to think about. Unfortunately, our love of cycling carries with it some serious hazards. Nothing replaces vigilance on the roads. But there are events that our vigilance cannot prevent. If you take the time to review and update your insurance and exercise the things I mentioned to document your accident, you will ensure the best possible result after a crash. Be safe.